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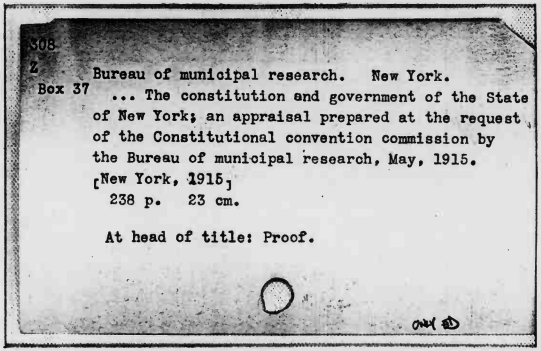

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Box 37

LETTER OF TRANSMISSION

Hon. MORGAN J. O'BRIEN, *Chairman,*
Constitutional Convention Commission,
2 Rector Street, New York City:

DEAR SIR—As requested, we are sending an appraisal of the constitution and government of the state of New York—based on the detail outline and descriptive report entitled "Government of the State of New York—A Survey of its Organization and Functions," prepared and submitted jointly with the state Department of Efficiency and Economy.

The discussion which follows covers these points:

Standards used in making the appraisal.
The electorate.
The official personnel of the government.
Principles governing general organization and structure.
The organization and procedure of the legislature.
Relation of the legislature and the executive.
The need for an independent auditor.
Relation of the executive to administrative officers.
Organization for carrying on the state's proprietary functions.
Organization for rendering public service.
The form and content of the present constitution.

So far as practicable each of these subjects has been treated in a separate chapter, with the thought that definite constructive proposals will be similarly grouped when submitted.

Very sincerely,

F. A. CLEVELAND,
Director.

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CHAPTER I

INTRODUCTION AND SUMMARY

In co-operation with the state department of efficiency and economy, the Bureau of Municipal Research prepared and published for the constitutional convention a volume entitled "Government of the State of New York—Organization and Functions." This work, with the exception of a brief prefatory note written by the commissioner, was purely descriptive in character. The report was designed to present an accurate picture of each department, office and commission of the state government as it existed January 1, 1915. One reason for making this report entirely descriptive was to avoid controversy and misunderstanding as to the facts. Another reason was that each of the agencies co-operating in preparation of the fact-report might draw different critical and constructive conclusions.

On the publication of this volume, the Bureau of Municipal Research was requested to make available to the convention an appraisal of the system of government described in the fact-report. In the chapters which follow are the conclusions reached. Detail constructive recommendations are not included for the reason that the constitutional convention commission was of the opinion that such of these as the Bureau might wish to propose should be submitted directly to committees.

In preparing this appraisal of the existing constitution and government the Bureau does not presume to speak merely on its own authority. For this reason it is thought desirable at the beginning to state frankly and fully what standards were used as a basis for judgment. The first chapter following this introduction contains such a statement. The standards given have not been selected from abstract considerations, but are thought to be those commonly accepted by managers of enterprises, public and private, on the strength of experience and observation. They represent, so far as can be judged, rules of appraisement drawn from common sense in the conduct of business enterprises and the experience of this and other countries in their efforts to develop democratic and efficient government. In so far as they are not to be accepted as a basis for criticism, they are open to attack, being separately stated for this purpose. Briefly characterizing the assumptions which are used as a basis for criticism, it is held: that proper machinery must be set up so that the opinions of the people may be brought to bear immediately and directly on the agents of government through voters at election; that machinery must also be set up for making executive officers responsible and responsive to public opinion; that the only way which has been

found for doing this as a matter of experience is to provide for responsible leadership, *i. e.*, to make it the duty of the executive definitely to formulate plans and proposals for legislative action, and not to permit him to dodge responsibility by submitting a general lecture on political principles or public morals; that by requiring the executive to take the initiative in matters which vitally affect administration, refusal to grant his requests, and in the form submitted, will raise a clear-cut issue that the people can understand; that such leadership is essential to responsible government, and such definition of issues essential to democracy itself—the only alternative being irresponsible government and domination by a "political boss."

Starting from these general assumptions or principles, it is urged that the activities of the legislature should be directed primarily to the determination of large state-wide policies and scrutiny of administration, rather than to the initiation of everything large and small, doing its business largely in committee rooms behind closed doors, and accomplishing its ends through methods of "log-rolling." Nothing could be more helpless than a democracy with a representative government without any kind of a leader. It has been due to the fact that the "boss" has rendered just this kind of a service that he has been developed. He is the product of the American way of handling public affairs.

In application of these standards to a critical appreciation of the government of New York, the following points are developed:

1. That American state government, in its essential principles, was not originally designed for efficient, constructive public work, but was the product of temporary and peculiar conditions growing out of the revolt against Great Britain. In their natural antipathy to leadership by a royal agent, the revolutionists rejected leadership altogether. In their fear of the British crown and the royal governor they came to fear all power, even if exercised by their own agents. Instead of making the executive authority responsible, therefore, they destroyed it. Knowing that royal agents could not be entrusted with authority, they came to the conclusion that no one could be entrusted with authority. Their ideal of government was a negative one and in seeking after a government powerless to do harm they set up one weak in power for good. This principle of negation, of preventing evil by dividing the powers of government into infinitesimal parts is the chief source of the wastefulness, irresponsibility, and inefficiency which characterize the present system of government.

2. In considering the organization of the electorate, the view is here taken that the effective function of the electorate is the approval or rejection of policies relative to things done by the government or proposed to be done by the government; that leadership is essential to the formulation of issues; and that such leadership can only be responsible

when it is made official and vested in those who are or may be charged with the actual conduct of public business. The provisions relative to an electorate are therefore not complete unless they surround it with conditions favorable to the effective exercise of its natural functions.

3. In the search of responsiveness and a means of locating and enforcing responsibility in the government, innumerable expedients, checks and counterweights, have been devised, most of which throw upon the electorate an increasing burden and fail to reduce the waste and confusion in the government. They are negative and not positive in their operation. Except in cities, nearly every new device is a plan to prevent some one from doing evil, not an institution for vesting in designated authorities powers for good equal to their responsibility for good, and then adopting the well known methods for enforcing this responsibility.

4. In the establishment of the conditions surrounding the election, appointment, promotion, remuneration, and removal of public officers, the same principle of negation has largely obtained. The so-called merit system of civil-service reform originated in a laudable effort to *abolish* "the spoils system," and the problem of the proper conditions of public employment from the point of view of efficient service to the state and justice to the employees has never received the serious consideration of any constitution or law making body.

5. In organizing the legislative body the principle of the representation of geographical districts, which was equitable enough in a time when rural communities and towns were fairly equal in population and possessed of substantially identical interests, has obtained to-day to vitiate the very essence of representation, namely, the accurate reflection of the will of all important groups of people in a highly complex society. The results are localism in politics—not the representation of state-wide interests which overleap county and city boundaries—and the persistent use of the gerrymander to destroy accurate representation wherever possible. Thus it happens that legislators are burdened with petty trading in local favors, the chief negotiator—the state "boss"— receiving the highest rewards.

6. Originally the legislature of two chambers represented divergent class interests. Now it does not. Question is raised as to whether the dual arrangement now serves any other than a negative purpose—whether its justification is not lack of provisions for leadership and for locating and enforcing responsiveness and responsibility against representative, as well as executive, officers; whether it does not operate to intensify friction, waste and confusion of responsibility in the government. It is pointedly urged that the two chamber legislature has been abandoned in nearly all of the greatest cities of the country in the name of efficiency and democracy; and that it is destined to disap-

pear from the state governments just so soon as the problem of constitution making has been approached by the people with enough seriousness of purpose to demand that the representative branch be used as a means of establishing and enforcing responsibility instead of confusing it and compelling the people to look to an irresponsible "boss" for protection.

7. The constitutional relations now established between the executive and the legislature have been successful in producing innumerable, fruitless conflicts, with an occasional good result as an accidental by-product. They are not of such a character as to enable either branch of the government to bring any issue to a positive outcome. The executive has large negative responsibilities in finances, but no positive authority commensurate with them. The legislature on the other hand can constantly interfere with the minutest details of administration without assuming any open responsibility for its success. The two departments may wrangle for months over the highly important question of which one has the support of the people without any chance being given to the voters to decide what only they can decide. In this tangle of contradictions all consistency and harmony would entirely disappear if it were not for the unofficial leader who holds the disjoined machine together by methods all his own.

8. The chaos that characterizes the general structure of the government runs through the executive department and all of its ramifications. The governor is given the executive power in name only, for many important executive divisions are entirely out of his control or at best only partly under it. In the first place, there is a number of executive officers who are elected by popular vote and entirely independent in the exercise of powers that are not independent in their nature. In determining what officers should be elected and what appointed, the constitution shows no consistency or adherence to principle. In the second place, where appointment is the method of selection fixed by law, there are usually such variations in the exercise of the appointive power that it is beyond the ability of anyone to find or define responsibility for administration in its entirety. The legislature has completed the confusion introduced by the constitution by the creation of a tangle of boards, commissions, and independent and practically irremovable officers, so that the governor is in fact stripped of real executive control over those who are regarded by popular opinion as his subordinates. In the third place, the administrative system, which deprives the governor of many of the powers essential to genuine leadership and responsibility, heaps upon him innumerable petty duties in relation to minor officers and divisions, which consume in trivialities the time that should be given to supervision of really important matters. In the fourth place, there is no grouping of activities and the functions of government, with a view to bringing under common executive consideration interrelated questions and problems of

management. The result is that the service is made less efficient, and the governor is put to the further disadvantage of dealing separately with 169 different independent units.

It is clear that the problem presented here involves more than a mere readjustment of parts—a rearrangement of powers and of departments, bureaus, and divisions of the administration. In fact it goes to the very root of the whole system of government. Responsiveness and responsibility for economy and efficiency cannot be secured by administrative readjustments alone. They can only be obtained by fundamental readjustment of the relations between the legislature and the governor on the one hand and between the governor and the administrative officers on the other—by making such constitutional changes as will assure responsibility and responsiveness in the government as a whole, constant and informed criticism and scrutiny within and without, official leadership in the formulation of policies, and the concentration of public opinion at elections on work of the government already done or omitted and work proposed for the future. Such is the burden of the argument which is supported in the following pages by reference to the concrete facts of New York state government.

Assuming that members of the convention may be able to agree on the fundamental changes which would be desirable, having in mind the experience both negative and positive of the last century, there remains the question of popular reaction to the proposals.

CHAPTER II

STANDARDS FOR THE APPRAISEMENT OF THE PRESENT CONSTITUTION AND GOVERNMENT

There is one principle that is fundamental to the political thought and action of every democratic commonwealth, namely, that the public business shall be managed as a trust. Representative government is the institutional form in which this principle is expressed—the representative character being adopted for the purpose of assuring the governed that powers shall be exercised and properties and funds shall be used for the common good.

Government Established for the Governed

A written constitution is a sovereign prescription or grant in the nature of charter of incorporation—a body of laws which are accepted as the rules that shall govern the government, and which in terms set forth the delegation of authority to persons who thereby are recognised as official trustees, and describe the conditions or limitations of their stewardship. Like other institutions and instruments, governments get out of adjustment. It has been for the purpose of providing an orderly method of finding out what changes are desired in organization, in personnel, and in institutional relations that "electorates," "representatives" and "constitutional conventions" are provided for. Every consideration involved in the amendment of constitutions has had to do with the better adaptation of institutional means to end—the end being government for the benefit of the governed.

Requirements of a Representative System

The institutional requirements to be conserved by the constitution may be simply stated. With a view to carrying out the principle that "a public office is a public trust," it is commonly accepted both as a basis for critical review of what is, and as a basis for considering the advantage of constructive proposals, that the government must be "*responsive*" to the will of the governed, and that officers as agents or managers of the public trust shall be held "responsible" for their acts. Nor is the citizenship, to whom proposals for constitutional amendments must be submitted, without ample experience for intelligent judgment as to what expedients are adapted to making government "*responsive*" and "*responsible.*" They have become familiar with these expedients in their contact with everyday affairs.

Experiments Adopted to Make Private Management "Responsive" and "Responsible"

Like representative government, an ordinary joint stock company is an incorporated trusteeship in which many are interested. The demands laid upon officers are that the management shall be "*responsive*" and "*responsible.*" The essentials among all the expedients that have been adopted to make the administration of corporate trusteeships responsive and responsible to the beneficiaries or members are these:

1. The selection of a person or persons as executor of the trust, usually called "*executive,*" who is charged with the duty of carrying on the business authorized.
2. The selection of "*representatives,*" usually called trustees, who are charged with the duty of meeting as a body or board to review the acts and proposals of the "executive" and approve or disapprove of them.
3. Provision for obtaining reliable *information* needed to keep the representatives and members advised about what is being done by the "executive."
4. Provision for developing a *faithful and efficient personnel* with which to carry on the business and for retaining it in the enterprise.
5. Provision for the prompt dismissal of the personnel that is unfaithful and unfit, and for the *prompt retirement* of the "executive" officers who do not retain the confidence and support of a majority of members as expressed by an "electorate" or through "representatives."

These may be regarded as underlying principles governing all the personal and organic relations of institutions with which citizens are familiar—the results of experience gained in efforts to make management of trusts responsible.

The Meaning of Executive Responsibility

The meaning of "executive" responsibility is quite as generally understood as are the requirements of trusteeship. In the common affairs of life, and in private corporate practice, executive responsibility means:

1. *Responsibility for leadership, i. e.,* for initiative in the preparation and submission of plans for approval by the board and for direction and control over the execution of plans after they have been approved.
3. *Responsibility for results, i. e.,* for efficiency in management and for economy in the use of mere material and funds.

Relation of Executive to Administration

This means that the "executive" is looked to as the one to come before the board or body of "representatives" at stated times, and tell them what has been done since the last meeting, and what is proposed for the future; and, in order that this requirement may be enforced, authority to proceed beyond a fixed date is withheld from the "executive," *i. e.*, action by him is made contingent on approval or affirmative action by the board or "representatives" of the members. The methods of financing are subject to board control, though the execution of authorizations to raise and spend money is left to the "executive." Conditions governing management and employment, such as the organization of departments and divisions of work, salaries to be paid, etc., are made the subject of board action, though responsibility for directing the execution of plans and for the honesty and qualifications of the personnel is left with the executive. To fix responsibility for management and to make it enforceable, the executive is to decide what devices shall be used, who shall be appointed or employed, subject to these conditions. The one who must be held accountable for getting things done—the one who must determine fitness and merit—the one who must devise and install methods for bringing acts of disloyalty and personal disqualification to official attention, is the executive. The executive must administer discipline; he must issue orders and provide the means for knowing how orders are carried out; he is the one who is held responsible for results.

Relations of the Board of "Representatives" to Administration

Responsibility for honesty, efficiency and economy is definitely located by holding the "executive" to account for devising and installing tests which will enable him promptly to discover and correct infidelity, inefficiency, and waste, so far as this may be done by the executive alone, and for bringing to the attention of "representatives" and "members" conditions unfavorable to good management over which he has no control. By making the executive responsible for leadership, for the honesty and qualifications of the personnel of administration, and for efficiency and economy as measured by results, each official "representative" in turn is held accountable by members for supporting the executive when he is deemed to be right, or for opposing him when he is deemed to be wrong. In fact, supporting or opposing the executive in all matters that may be proposed by him is the chief function and purpose of "representatives."

Means for Keeping "Representatives" and "Members" Informed

It is essential to responsible administration that some means be devised for keeping "representatives" and beneficiaries informed about

what is proposed, and what is being done. Withholding authority until proposals have been explained by the "executive" and past acts have been reviewed, has already been satisfactorily noted. In aid of this method, definite reporting dates may be prescribed and even the form in which proposals and accounts shall be submitted may be laid down in the charter or otherwise. Other expedients are also provided for supplementing these requirements, such as, the appointment of an independent to auditor; giving to representatives the right of interpellation; giving to members and representatives the right of access to public records; providing for publicity and discussion of all matters bearing on the management.

An Independent Auditor

One of the most effective means devised for keeping "representatives" and members informed about the current details of management is the election or appointment of an officer whose duty it is to prepare an independent statement of facts to be laid before both the board and the membership, as a basis for judgment concerning any matters that may be the subject of controversy. Thus the English Corporation Law (The Companies Clauses Act) provides that the shareholders at their annual meeting shall select an auditor who shall have the right of access to all papers, records and vouchers. This "auditor" is required to report independently to representatives and to members on the conditions, transactions and results found, being held civilly and criminally liable for misstatement of fact; and in case the shareholders may neglect to appoint or elect an auditor, the government, through the board of trade of London, may do so on application of members who may constitute the minority. With a view to qualifying the "auditor" for having a detached independent view, it is made a condition precedent that he shall not be a trustee or officer or otherwise officially connected with the administration. This is a *democratic* method of corporate control. It is also positive in its action, as it is a means for using the existing machine of the corporation to develop the personnel of management and make it more effective. In Germany, France, and the United States, legal provision has been made to prevent fraud, and violations of law. This is autocratic and *paternalistic* on the part of the government. It is negative in its action, as it employs outside agencies of official "examination" and "regulation." The purpose of both methods, however, is to provide means for exercising control over the management.

Under the English system, and in this country where shareholders have adopted the English method as a matter of self-interest, though not required by law, the independent auditor has had no responsibility for management; his only duty has been that of reporting accurately the

transactions and results of the management. He is constituted a staff agent of the membership, the primary purpose being to establish the fact of honesty and to give the manager the means of having efficiency and economy brought to the attention of members by someone who has no official functions to perform, other than to supply the evidence of dishonesty, inefficiency and waste, if any is found.

The Right of Interpellation and Personal Inquiry

Another effective means for developing information about performances and proposals of the "executive" is to require him personally to appear before the board at its meetings and answer questions. This has the effect of keeping the executive in a condition of preparedness. Knowing that this is a condition to support, great care must be taken at all times to have every proposal fully considered and supported by statements of fact and reasons that are convincing to the beneficiaries of the undertaking as well as to their representatives on the board.

Access of "Representatives" and Members" to Records

As a matter of common law resting on common experience, provision is made for access to records by beneficiaries, under prescribed rules and by the regular representatives at all times. This right of access, together with their right of personal inquiry, criticism and opposition, has been utilized and made effective through the appointment of regular and special committees of the board, whose duty it is to go into designated subjects and to report on conditions and results. They constitute specialized advisory committees who in turn may employ such independent staff agents to assist them as may be desired.

Provisions for Publicity and Discussion

The auditor, the right of interpellating and making personal inquiry of the "executive" by "representatives" at board meetings, the right of inquiry by committees of shareholders, and the standing and special committees of the board, these are expedients for developing information but not necessarily for publicity. The holding of meetings at which all members are privileged to attend, requirements that minutes of meetings shall be kept and made available to members, regulations calling for the publication of reports by the executive branch, the publication of reports by the auditor certifying to conditions and results, are among the prescriptions that are commonly employed to carry executive responsibility home to those who may exercise powers of control.

Positive Provision for Making Management Effective

From the viewpoint of the manager, however, provisions for a "representative" body, for an "auditor," for "committees," for "publicity" are negative in their operation. Positive provision is made for the development of leadership and for building up an efficient service by giving to the executive the authority to employ an organization which is adapted to the expert handling of the business both in *planning* and in the *execution of plans.*

Adoption of Means of Obtaining and Retaining a Faithful and Efficient Personnel

One of the essentials of institutional success is a loyal personnel; another essential is that a personnel be developed and retained that is able to perform efficiently the tasks assigned. The personal equation in a private corporation as well as a government is one that too often has been lost sight of and the various devices for seeking out persons qualified and for building up the esprit de corps is a matter of increasing concern to managers as well as of increasing interest to those who are keeping in elbow touch with institutional methods. In enterprises of large proportions whose activities are varied and widely scattered the employment office, and what has come to be known as the "welfare" department, are the arms of the service whose business it is to deal with the individual side of the personal equation, while the officials in charge of work departments are charged with responsibility for the utilization of individuals for getting group results. What the purchasing agent and the storekeeper and custodian are to the material side of the enterprise the employment office and "welfare" department are to the personnel. Their function is a staff performance, the purpose of which is to inquire carefully into the qualifications and fitness of persons seeking employment, to keep in touch with the working conditions affecting health and comfort, to look after training the employees and to lay down and supervise a system of promotions and demotions, to administer rules governing veterans and pensioners, and other matters that make the employment attractive to new recruits and provide a vocation for men such as will enable the corporation to retain the exeprience and expertness developed by it in handling its problems. With those ends in view, the executive is given the power of appointment, removal and discipline and he is also given advisory facilities for making his action intelligent and just in every matter pertaining to the employment and welfare of subordinates.

Administrative Staff Agencies

As a means of enabling the chief executive and the heads of departments to become more effective in directing the details of business, specialized staff agencies for inspection, for legal advice, for the preparation and consideration of budget proposals, for verifying the accuracy

of reports, both of custodians and of work results have also been developed. Staff agents are detached from all administrative responsibility and left free to make independent investigations into all problems that arise as to old work or new work. The line agents are responsible, active heads of departments. Adequate "staff" and "line" agencies for the exercise or control over fidelity, economy and efficiency by the executive have been found to be essential to management of large corporate business. Having required the executive to take the initiative in the preparation and submission of plans and proposals, the experience of all of these agencies may be brought into service, not only for the upbuilding of the management, but for the information of the board and ultimately of the membership. The executive being put in such position that he must defend both results obtained and new projects submitted for approval, being required to meet and satisfactorily answer adverse criticism, or if criticism may develop weakness in the original proposal being made, to assume responsibility for any amendments, no such condition can obtain as irresponsibility in the management of affairs. Either the executive must be supported by "representatives," or, in the last appeal, by "members," or he must retire.

Use of "Line" and "Staff" Advisers

In a large institution, one which is so varied and complex in its activities as to require subdivision into departments, provision is made for developing efficiency in management through "staff" and "line" advisers, as explained above. In other words, the executive as a means of protecting his responsibility, may require that the project or plan of a department head, before it comes to him for his approval, shall have the consideration of all related heads of work—officers who may be constituted a cabinet or executive board, and he may also require review and report by persons called a "staff" who have been detached from administrative responsibility for the purpose—persons who are qualified to consider the particular problems or the questions vital to the proposal. Having done this, when the executive comes to a decision or goes before his board with a new work, project or a plan of financing, for the purpose of obtaining their approval as a basis for executive action, he will not only understand what the proposal is, but he will know that it has had the best thought that the most competent persons of the entire organization can give. Further than this he will know that every question of difference in interest or opinion, which may develop between heads of the "line" or between the "line" and the "staff" has been resolved in the discussion which takes place before he is required to assume responsibility for presenting a proposal to the board for authority to act; or if, this be not required, before he issues an executive

order for which he will be later held to account. In this consideration by the line and staff advisers, and in discussions of differences before the executive, every detail of a proposal must of necessity be supported by such statements of fact as will enable the executive later to answer every question or criticism that may be raised for him to answer before the board or to inquiring members—if need be—before a court.

Prompt Retirement of Officers who Do Not Represent a Majority

Provision for promptness in retiring an administration which fails to retain the support of a majority not only insures responsiveness, but is the means for enforcing official responsibility. In case the chief executive is elected by shareholders, then when an irreconcilable difference of opinion on matters of policy or administration develops between the board and the executive, the issue becomes clearly defined through inquiries and discussions that take place between the "executive" and "representatives" at board meetings and it is determined by ballot whether a majority of representatives is for or against each proposal. And the statements of fact and the arguments which are used in support of one contention or the other, become the property of the membership. When, therefore, these issues go before members at an election to ascertain which faction or party will be returned, both the executive and the board are brought into harmony and made representative. In case the "executive" is appointed by the board, any irreconcilable difference between the executive and a majority of the board must lead to the resignation of the "executive."

Absence of "Irresponsible Boss" in the Administration of Private Business

In any case the only faction or party which can develop and command any considerable attention or following in a private corporate controversy over official acts or matters of policy, is a party in support of the executive or a party which is against him. When these expedients adopted to make the management of private business responsible are fully operative, there is no such thing as an "irresponsible boss." As a matter of organization, *leadership* is placed with a responsible executive and *leadership* in the opposition when it is supported by a majority must itself become responsible by accepting executive responsibility. If the opposition leader himself refuses to become the executive, when supported by a majority he either must resign his leadership to the executive, or the administration itself becomes irresponsible.

Conditions Under Which Private Management Becomes Irresponsible

The conditions under which private corporate management becomes irresponsible are conditions in which well-known expedients for making

management responsible have not been adopted, or if adopted have become inoperative. Whenever the "executive" is required to assume responsibility for leadership, for the honesty and qualifications of the personnel, and for the efficiency and economy of management, as measured by results, and whenever as a means of enforcing this responsibility provision is made for independent audit, for the executive coming before the board to be personally interrogated, for independent and effective inquiry by membership and board committees, for requiring representatives on the board either to support or oppose the executive measures, without impairing executive responsibility for what is finally adopted, and for adequate publicity and discussion, the management cannot be other than responsive and responsible to the majority, as determined by regulations giving voting power. The question as to who shall be empowered by charter agreement or otherwise qualified to express the will of the majority is a matter that is to be independently considered.

Expedients Adopted to Make Control Over Public Business Effective

As has been said by a noted writer on constitutional law, "The business of government, like all other business, falls into two great divisions—the determination of policy and principle, and the working out of details; the settlement of what is to be done and the doing of it."

Similar to Those Employed in Private Undertakings

The expedients adapted to making control over public business effective are just as well known as are those for making control effective in private affairs. What is worthy of note is this—that those governments which have been most responsive to the people, and whose "administration" has been held to most strict account, have been those in which the best experience of private business has been most closely followed. Those governments that have been most *responsive* have been those whose constitutions have provided for making the legislature a body that is representative of constituencies, and which have provided for prompt reference of all irreconcilable differences between executive and representative body on matters of policy to the "electorate." Those governments have been most *responsible*, whose constitution have provided for "executive" leadership by holding a single executive to account, both for new requests and administrative results, and by establishing a relation between executive and representative body, which requires the "responsible" head of the administration to keep behind him a majority, the penalty for loss of confidence being prompt retirement from the service. Those governments have been most *honest*, which have provided for the protection of the personnel of the service

who are faithful, by prompt discipline or dismissal of those who are unfaithful. Those governments have been most *efficient* in which the "responsible" head of the administration has been provided with effective staff agencies—a personnel detached from directing responsibility—which, with the heads of departments (*i. e.*, of the "line") are organized to consider and report on results obtained, as well as new plans submitted.

Responsiveness and Responsibility of Executive

The positiveness with which these expedients have acted, even where the forms of monarchy have been retained, as in Western Europe, in locating and enforcing responsibility and responsiveness on the executive has been convincing. For example, in England and Italy, as well as in France, fundamental democratic ideals and practices have been incorporated and made effective in government, although the hereditary monarchs still use the language of absolute rulers and speak of "my subject," "my army," "my government." Where democratic ideals are most highly developed, the hereditary monarch, if he still remains, abstains from active interference in politics, and as a means of providing for responsiveness and responsibility a prime minister is chosen. He, with the ministry organized by him, is made responsible through the representative body to the electorate. Even where the monarch participates to some extent in politics, he does so more or less under the guidance of such ministers and subject to the support of a majority. Thus the immediate conduct of the details of administration is vested in an executive board or directorate, known as the cabinet. The continuance of the cabinet in office depends, in each case, upon their responsiveness to public demands, upon the manner in which they use their discretionary authority, upon the honesty and competency of those whom they employ to transact public business, and upon the efficiency and economy with which public resources are used and protected.

The Mechanism of Popular Control

Furthermore, under these so-called monarchies, the mechanism for the exercise of popular control is made just as simple and direct as in a private corporation. In every instance this is done through the utilization of an "electorate" and the development of a procedure by means of which existing agencies of government may be employed for making the political issues as definite as the issues presented to a jury in courts of law. Agencies are also created for presenting statements of fact and arguments in support of contentions when issues are joined and a vote is taken, whether by the representative body or the electorate.

These are methods with which every man is familiar in the conduct of his ordinary corporate affairs.

Responsibility for Leadership

What is worthy of special attention is this: that in every representative government, whether republican or monarchical in form, where devices have been adopted for making government responsive and responsible, there has been no such thing as an *irresponsible political boss*. In other words, constitutional provision for responsible leadership has been found to be an essential ingredient of responsible government. In every country where responsible government obtains, the leader of the party in power necessarily is the one who is made to assume responsibility for the acts and proposals of the administration; and the leader of the "opposition" is made responsible just as soon as he obtains the support of a majority, *i. e.,* when the leader of the opposition succeeds in retiring a responsible executive, either he must accept responsibility for the management, or retire in favor of someone in the opposition who will.

CHAPTER III

CONSTITUTIONAL AND STATUTORY PROVISIONS GOVERNING THE ELECTORATE

The constitution of the state provides for two kinds of governing agents:

1. An electorate, *i. e.,* a personnel whose only official function is to register the consent or dissent of citizens on questions or proposals submitted to the several constituencies for expression of opinion.
2. Representatives and officers—a personnel which is charged with the duties of *representing* the electorate between elections, and of *conducting the business* of the state.

Leading Constitutional Questions Relating to Electorate

The leading constitutional or legal questions relating to the electorate therefore are:

1. Who shall constitute the electorate?
2. What shall be the organization and procedure for formulating and presenting issues and questions to the electorate so that they may be understood and publicly discussed?
3. What shall be the organization and procedure for taking a vote—*i. e.,* for getting a true expression of opinion that will be binding on the official personnel of the government?

Definition of the Electorate

The question as to who shall constitute the electorate should be a matter of community judgment, founded upon considerations of expediency, the welfare of the state, the moral rights of human beings, and broad principles of democracy. The function of the electorate being to register public opinion on issues and on the selection of persons for such offices as are to be filled by popular choice, the composition of the electorate, as a personnel to whom authority is given to express the popular will, should depend upon the relative competence of different classes of persons in the community to think intelligently about public needs, official proposals and official acts.

Composition in England After Magna Charta

Historically the composition of electorates has depended upon the prevailing judgment in each politically organized community with respect to the material and moral capabilities of persons and their fitness to partici-

pate in the exercise of control over men and affairs. In England, after Magna Charta, the sovereign power was in the hands of the lay and spiritual baronage as great landlords; later the lesser baronage, the landed gentry and burgesses came to a share in the government as electors, and in the nineteenth century the workingmen of the towns and the agricultural laborers were admitted to the suffrage.

Who Constituted Electorate in 1777

At the time of the formation of the first constitution of the state of New York, the landed proprietors were in an overwhelming majority, and the leaders among them believed that the land owners were "the only safe depositaries of public power." Accordingly the first constitution gave the freeholders a special weight in the government by providing that the governor, the lieutenant governor, and the senators should be chosen by freeholders, the last named group by freeholders possessed of freeholds worth one hundred pounds over and above all debts charged thereon. With this material safeguard for the landed class securely established, a slighter property qualification was provided for voters for members of the assembly, which admitted to the suffrage renters and taxpayers and "freemen" of the cities of New York and Albany.

Initially, Electorate a Small Fraction of the Citizenship

These qualifications, as slight as they were for the voters for assemblymen, excluded from the suffrage a considerable portion of the adult males of the state. How large this portion was we cannot determine from the figures available, but we have a reliable statement to the effect that "The census of 1790 shows that out of a population of thirty thousand in New York City, there were but 1,209 freeholders of 100 pounds or over, 1,221 of 20 pounds, and 2,661 'forty-shilling' freeholders." From scattered figures we may conclude that about one-third of the adult males were excluded from all participation in the state government, even in the election of assemblymen, under the constitution of 1777. It is estimated on the basis of a careful study that not more than 150,000 out of approximately 600,000 adult males or about four per cent. of the entire white population of the United States took part in the elections at which were chosen the members of the state conventions which ratified the federal constitution in 1787-1789.

Subsequent Enlargement of Electorate

Gradually the qualifications and limitations on the electorate were changed in response to public opinion and to altered conditions of social life. By the constitution of 1821, the special safeguards for landed property in the election of governor and assemblymen were swept away and the qualifications for voters for assemblymen were lowered. By an

amendment of 1826, all white males who complied with the resident requirements were empowered to vote for all elective officers, but property qualifications were retained for persons of color. The constitution of 1846, while continuing the adult white manhood suffrage, left property qualifications upon colored voters and these remained a part of the fundamental law until after the Civil War.

Thus step by step adult citizen manhood suffrage has been established in New York. The effect of this constitutional development is to place the voting power in the hands of about one-fifth of the citizen population or about one-sixth of the total population of the state.

Controversy Over Present Provisions

The provisions of the present constitution which are subjects of controversy are those which relate to the exclusion of criminals, public charges, and women. With regard to the first the constitution says that the legislature shall enact laws excluding from the right of suffrage all persons convicted of bribery or any infamous crime and that "no person shall be deemed to have gained or lost a residence, while confined in any public prison." There seems to be no reason for changing this provision.

Public Charges Not Disfranchised

With regard to public charges, the constitution does not disfranchise paupers; it merely states that no persons shall be deemed to have gained or lost a residence for the purpose of voting while kept at any almshouse or other asylum, or institution wholly or partly supported at public expense or by charity. It is a common practice in European countries to exclude from the suffrage those who are or have been supported in public institutions, and in many instances, those who are or have been in receipt of what is known as "out-door relief." And it has been contended that New York shall follow the example of European countries. At first glance, it would seem that such a constitutional provision would safeguard the state from undesirable voters, on the theory that any person in receipt of public relief could not possess the independence requisite for an elector. It is recognized, however, that as population has come to be more dependent on urban industry, an increasingly large proportion of the working classes of our cities and towns are in receipt of public relief, at some time in their life, and particularly during periods of widespread depression and unemployment. This makes it apparent that any such constitutional provision strictly enforced would disfranchise thousands of worthy citizens and would, in fact, amount to a restoration of a property qualification more exclusive in its operations than the provisions swept away nearly one hundred years ago. Moreover the difficulties of administering and enforcing such a provision are well nigh insuperable,

except in the smaller communities where the recipients of relief are well known or easily discoverable.

The Pros and Cons of Woman Suffrage

The arguments in favor of extending the suffrage to women are familiar and they may be summarized as follows: That the demand for the ballot is more extensive among women today than it was among the disfranchised men at the time the vote was granted to them; that women are taxpayers, direct and indirect, and therefore have a property stake in the government; that, admitting the domestic character of the occupation of a majority of women, there is no reasonable or inherent grounds for holding that domestic employments unfit one for the exercise of the franchise while gardening, ditching, or bookkeeping do not; that, moreover, a very large percentage of women over sixteen years old are wage earners out of the home (16% in the North Atlantic States in 1870, 18.7% in 1880, 22.4% in 1890, and 24% in 1900) and therefore as much a part of the world of commerce and industry as men; that the capacity for bearing arms is not and never has been the test of a voice in the government, and that women suffer and endure as much in war time as do the men, if not more; that the necessity for men being in military occupation, whether absent from their communities or not, is made a barrier to voting in France and in any event, is an added reason for authorizing women to vote since one cannot think intelligently about civil affairs while absent and engaged in military campaigns; that even when men are not absent on military duty, women have a closer contact with a large part of the activities of the government—those which touch the home and community life—than do men; that tested by the statistics of education and crime, women show intellectual and moral standards that indisputably prove their fitness for the ballot; that the logical development of the electorate as an effective instrument for expressing community opinion on public men and measures, requires the admission of women to the electorate.

The arguments against woman suffrage go to controvert these conclusions. In addition, it is urged that voting will take away from women the seclusion and detachment from affairs that gives to them a subtle influence more refined and effective than could be attained through numerical count. It is hardly to be presumed that any excursions into the logic of the woman suffrage question will affect the judgment of the members of the convention in this matter. As Mr. Justice Holmes has wisely said: "General propositions do not decide concrete cases. The decision will depend upon a judgment or intuition more subtle than any articulate major premise." It required fifty years of argumentation and agitation in the United States to establish the principle of white manhood suffrage. The progress of woman suffrage during recent years has been

much more rapid than that of manhood suffrage in the nineteenth century. It is in point, however, to draw attention to this as one of the issues that must be squarely faced by the convention, as well as the present electorate. The fact that the final arbiter of the issue as to whether the number of the electorate shall be increased is the electorate itself, may account for the hesitation felt by those who have the "subtle intuitions" mentioned by Justice Holmes, the effect of which has been to postpone the acceptance of a new constituency.

PROVISIONS FOR THE DEFINITION AND DISCUSSION OF POLITICAL ISSUES

A condition precedent to the exercise of electoral control is this —that before a consensus or majority opinion may be taken on any question at issue the "proposal," on the one hand, and the "opposition," on the other, must be so clearly defined and stated that differences in viewpoint can be presented and discussed, and finally that a vote may be taken "for" or "against" or that a "yes" or "no" ballot may be cast.

Conditions Governing Effectiveness of Electorate

This means that the effectiveness of the electorate depends on the use of an organization and procedure by means of which proposals and counter proposals of officers who are authorized to submit questions to the electorate may be brought to a vote. Fundamental as such a procedure is to popular government, it has been left out of consideration in framing all our constitutions and in developing the laws and regulations governing authorities under them.

Necessity for Development of a Procedure

This necessity is recognized by the courts. For the purpose of judicial consideration of questions in controversy involving private rights a very exacting procedure has been evolved. Both statutes and rules require the preparation and submission of issues in definite, formal counts, or complaints with answers and replies so framed that there can be no question as to what the issue is when the case is presented to the court for the taking of testimony, argument and decision. Similarly, a very exact procedure is prescribed governing motions and arguments before the court on questions of law; even more minute is the practice controlling the production of evidence, both in court and jury proceedings, and the submission of briefs and arguments of counsel. Public opinion has demanded and supported an organization and procedure wherein courts have surrounded themselves with attorneys, referees and other officers as aides in coming to right decisions; they control every detail of proceedings by rules of practice based on centuries of experience, the aim of which is to facilitate the ends of private justice by clearly defin-

ing, presenting and arguing issues in a manner which will enable the court and the jury to decide whether it is "for" or "against" the proponent or complainant.

Notwithstanding the fact that the government has been so exacting in relation to the whole subject of private justice, it has given practically no attention in this state, and little attention in this country, to the subject of defining, presenting and determining issues having to do with the subjects of political justice—issues, questions, decisions on matters of public policy—questions which affect the happiness and welfare of the whole community—questions which are submitted to the "electorate" as a jury whose duty it is to sit and decide political controversies by ballot. This widely scattered agency of popular control has been left without provisions, either in organization or procedure, even for defining, let alone taking evidence on and, reaching decisions with respect to issues to be determined by ballot.

The Whole Subject Left to Private Initiative

In this country, the whole subject of defining and presenting political issues has been left to private initiative. Here necessity, the mother of invention, has produced a long series of unofficial non-legal devices, which have had for their purpose the doing of things that have been elsewhere more effectively done officially under conditions that contribute to responsibility. Without doing more than to advert to these adaptations, attention is called to the fact that the non-official and detached character of our political agencies called "parties," even since they have been made the subject of regulation, in the nature of things leaves our electoral system defective in the following particulars:

1. The *parties* themselves, under our system, are irresponsible. Any agency whose responsibility cannot be defined and located in a body of official persons within the government is, of necessity, an irresponsible agency; therefore, it is one that does not make for "responsible" government.
2. *Party action* is not taken on well-defined current issues. The proposals of our political parties are made and submitted in generalities for the primary purpose of obtaining votes for persons seeking office and ordinarily they do not present issues arising out of an actual division on important measures or subjects of public business.
3. *Proposals* by irresponsible non-official agencies are not adapted to securing sound judgment from the electorate and are not adapted to making the government responsive.

The Party Platform as an Attempt to Define Issues

The instrument at present employed in presenting party claims to popular support is what is called a "platform." This is prepared and used to further the efforts of a "party" that is seeking to get control of state offices. It is made up largely of promises and not of issues. As a result of remarkable legislation in New York the party platform is made by an extra legal and wholly uncontrolled convention and the candidates are nominated by a totally different body—namely, the entire party electorate. Thus it may happen that the platform may be drafted before or after the nomination of candidates and that the candidates of the same party may not only have no harmonious relations, but may even entertain the widest divergence of opinion on matters of public policy. It may happen, also, that one group of the party may control the platform-making convention and another group may nominate candidates wholly out of accord with the express policy which they are supposed to carry out. In short, it is impossible to imagine a system less calculated to secure the union of the party on principles of public policy and to localize responsibility in specified public officials put into power by the party.

Method Not Adapted to Responsible Government

Assuming, however, that a union of party nominees on the principles of the platform is possible under our present system, there are other devices which unavoidably make for irresponsibility in our government. There is no process whereby we may be sure that the "platform" relates to specific acts of officers associated with the public measures and policies in dispute. On the contrary, the "platform" is a long list of generalities and an arraignment—a general list of proposals advanced by one "unofficial body" against another "unofficial body." These non-official organizations and non-official expressions of opinion are not concerned with the definition and decision of a single issue. Parties enter upon a campaign with a platform as a general declaration of political faith in the hope that they may get the electorate to pin their faith to their candidates, rather than settle any one or more of the broad questions presented. An election, therefore, does not approve or disapprove specific acts of officers or of an organized official body called "the government," but it is a count of votes for candidates for office who are not leaders and who do not have anything more than remote relation to what has gone before or what may happen thereafter. That is, our political contests do not center sufficiently in official persons who have performed certain acts of government or carried out specific policies or in candidates who, if elected, will do certain things or establish certain policies.

PROVISIONS SAFEGUARDING THE EXERCISE OF THE FRANCHISE

In all countries and under all systems where an "electorate" is established as an agency of control, it is necessary to provide an organization and a procedure—

1. For determining that only such persons vote as are authorized or qualified.
2. For protecting electors from undue influence while at the polls.
3. For obtaining a true record and report of results.

This is of equal importance whether leadership is "responsible" or "irresponsible." If the leader is responsible, he may use all of the executive powers to continue himself in office and further his own usurpation, unless provision is made for the independence of election officers. If leadership is "irresponsible" then the "boss" through his control over the executive may use election officers to continue a régime of spoliation.

Successful Development of Safeguards in the United States

It is a curious reflection upon American political genius that, although it has failed to develop machinery for securing precise and effective action by the electorate on issues and official actions, it has evolved perhaps the most successful and elaborate methods and procedures for the protection of the voter in the exercise of his electoral rights. The first constitution of the state provided for a full and fair experiment with voting by ballot, a device not then generally employed, and since that time the problem of securing a "fair vote and an honest count" has received extensive consideration at the hands of the legislature and constitutional conventions.

The provisions developed for obtaining this desirable result include the following:

1. Registration of voters before election.
2. Official primaries for political parties.
3. The Australian ballot.
4. Bi-partisan local supervision of elections with multi-partisan co-operation in watching.
5. State supervision of elections and official count of ballots subject to judicial review.

In view of the attention which has been devoted to the perfection of this electoral machinery, it would seem that very little remains to be done in the future. The subjects which are still under marked controversy are citizenship and registration, the form of the Australian ballot and the office of the Superintendent of Elections.

Citizenship and Registration

In the effort to prevent fraudulent registration and what is known as the "floating vote" evil, provisions have been inserted in the constitution to the effect that each elector must have been a citizen of the United States for ninety days, an inhabitant of the state for one year, a resident of the county for four months and the election district for thirty days preceding the date of the election at which he casts his ballot. Stringent as these safeguards are, there is a demand for increasing the terms of citizenship and residence in the county and election district. By the present limitations thousands of otherwise qualified and honorable citizens are deprived of the right to vote every year, particularly in the cities where the conditions of life are such as to require constant movement of residence, especially by workingmen and the professional classes. To disfranchise still more honorable citizens in an effort to prevent illegalities, instead of strengthening the machinery for preventing fraud, is attacking the problem in the wrong way, and cannot be too vigorously condemned. Whether intended as such or not, it, in fact, is another political device for disfranchising the voters of New York City on the untenable assumption that there is more corruption there than in the rural districts of the state.

The Form of the Australian Ballot

The objection has arisen that the Australian ballot may be so devised as to become an instrument of the irresponsible boss if the party column is employed in the arrangement of the names of candidates. The constitution merely provides that elections, except for such town officers as may by law be directed to be chosen otherwise, shall be by ballot, but the form of the ballot may be greatly varied under this constitutional provision. Indeed, under it expedients may be resorted to that will destroy the spirit of the constitution while adhering to the letter.

It has therefore been proposed that the present statutory safeguards against the party column ballot should be established in the constitution. Such proposals, however, seem to be based on a misconception of the real source of the difficulties arising out of the party column system, namely, upon the erroneous idea that the party is normally an evil, whereas the real objection is not so much to the party column as to its length. Where the representatives of a party can be made entirely responsible for the conduct of the government when placed in control, there can be no objection to giving the party full recognition on the ballot. Where, however, the administrative branch of the government is broken into innumerable elective offices the long party column ballot becomes the ambush in which the invisible party boss hides his train of petty minions. To scatter these candidates for minor offices among a number of groups or place them in alphabetical order does not in fact make them responsi-

ble. The objections therefore to the present constitutional provisions respecting the ballot should be directed to the structure of the government itself—not to the form of the ballot. If responsibility in the government is properly established, the determination of the form of the ballot may be safely left to the legislature.

State Supervision of Elections

The third administrative problem in connection with safeguarding the exercise of the franchise is state supervision of elections. In other states the control of the election process is left to local agencies, subject of course to judicial review under certain circumstances. In New York state also there are several local authorities charged with functions relative to preparing and distributing the ballots, receiving and counting the ballots, and policing the polling places, but to these functionaries there is added a central officer, known as the superintendent of elections, supported by a large staff of deputies whose duty it is to aid in preventing illegal registration of voters and illegal voting. This central control is the product of conditions which are almost peculiar to New York. Broadly speaking, the political faith of Greater New York City is different from that of the "up-state" region, as it is known in political circles. Out of this rivalry of parties came the establishment of a state supervision of all elections directed against the City of New York. To speak frankly, it was a Republican device for preventing frauds in a Democratic community. Although the expedient accomplished some very good results, it was never regarded as wholly satisfactory from any angle and was the subject to constant criticism and occasional modification, the last being in an act passed in 1915.

The principal features of the system as now constructed are as follows:

1. Supervision is centralized in the hands of *one* superintendent of elections, instead of three.
2. The supervision is state-wide and not confined to cities.
3. All deputies are made completely subject to the control of the superintendent who appoints and removes them at pleasure. They are no longer to be the mere nominees of county chairmen of political parties.

The chief functions vested in this branch of the government are:

1. The investigation of all questions relating to registration of voters.
2. The arrest of persons who violate the provision of the chapter on elections or the penal law relating to crimes against the elective franchise.
3. Attendance at the polling places and co-operation in the enforcement of the election law.

Obviously here is an arm of the government endowed with enormous power. It is substantially at the disposal of the governor who appoints the superintendent of elections, and may remove him. It may readily become a partisan instrument because the deputies are uncontrolled by either by bi-partisan provisions or the restrictions of the civil service law. As such it may be used as unfairly as were the federal marshals and their deputies under the "force bills" of Reconstruction days, who became so odious throughout the country that the whole system was abandoned. At all events no effective and unpartisan state supervision of elections has yet been devised. Charges of maladministration in the work have been constant. It remains to be seen whether the present law will prove more satisfactory than past measures and whether attempts at state supervision of elections are not more dangerous (where not futile) than the practice of trusting to local officers, party rivalry and non-official efforts in every community.

CHAPTER IV.

THE OFFICIAL PERSONNEL

Provisions of Law Governing the Qualifications, Method of Selection, Tenure, Compensation, and Welfare of Persons Employed in the Public Service.

Lest it may be thought that the word "official" is here employed in the narrow sense recognized by courts in distinguishing the administrative officers from members of the legislature, it is to be first noted that the use here made is to differentiate those who are in the organized public service from the "*electorate.*"

As was pointed out in the preceding chapter, the public agents other than the "electorate" consist of the personnel charged with the duty of "representing" the electorate between elections and the "administration" —a personnel charged with the duty of conducting the business of the state.

Subdivisions of Subject

The problem of selecting such official agents, determining their qualifications and personal rights, and maintaining those conditions requisite for the full and satisfactory discharge of their duties, is a fundamental problem which should be concretely dealt with in constitutional and statutory provisions governing the government. Any quest, therefore, for responsible and efficient government must go deeply into the establishment of:

1. Proper methods for selecting official agents—election or appointment.
2. Tenures of office adapted to the ends sought.
3. Adequate tests to be applied in determining the fitness and qualifications of public servants.
4. Satisfactory conditions governing the treatment, promotion and dismissal of public servants.

Importance of Separate Consideration

The solution of these problems with reference to standards of responsiveness, responsibility, and efficiency has never been undertaken in a systematic and thorough manner by any convention or other body of representatives in this state. There are many provisions in the present constitution governing the choice, qualifications, removal, rights, and disabilities of public agents (see Appendix I, Page to), but the subject as a whole has received no extended treatment. On the contrary, temporary expedients and partisan consideration have been too

often the decisive factors in determining what officers should be elected, what officers should be appointed, and what conditions should be attached to public employment. Where attempts have been made to regulate the conditions of official employment in the public interest, they have usually been negative in character—that is, designed to prevent known evils such as the so-called spoils system rather than to promote efficiency. How to obtain advantage for some partisan group or to prevent official agents from doing harm—not a reasoned effort to formulate a constructive program—has been the predominating consideration in shaping a very large number of provisions in the present law governing elections, appointments, qualifications and removals.

METHODS OF SELECTING PUBLIC AGENTS—ELECTION OR APPOINTMENT

When tested by constructive standards, the present constitution reveals a remarkable absence of consistency. Obviously, in determining what agents should be elected by popular vote and what appointed, both the purpose of the "electorate" and the demands which are to be made of the official personnel, as a means of making the government responsive and responsible, are to be taken into account. But it is not apparent that these considerations have been the determining factors in the organization of the existing government. In adapting methods to the purpose of the "electorate," it is desirable that they shall be such that popular will may be accurately reflected in the government, but it does not appear that the preceding conventions have sought to discover what and how many agents should be chosen by the popular vote, in order to attain this result.

Election of Members of the Legislature and the Governor

With respect to certain governing agents, the method of choice has, of course, been easily determinable. The representative principle itself requires that the legislature should be chosen by popular vote, but as is pointed out in another relation (below, pp. 60-64), the decision as to the method of determining what is the popular choice is not so easily reached. Similar considerations of responsiveness and responsibility have likewise brought about the popular election of the governor. No serious criticisms of that process of selection have ever been made and the other states which originally provided for the choice of the governor by the legislature or by an electoral college have abandoned them to follow the example of New York and Massachusetts.

Election of Other Officers

At this point, agreement among publicists and statesmen on the matter of election versus appointment and consistency in our state constitutions disappear. In determining the methods of selecting all of

the remaining agents of government, historical, negative and apparently accidental considerations, have had a preponderating weight. The possible exception is the lieutenant-governor who is, in New York, chosen by popular vote, but who is dispensed with altogether in other states, for example, the neighboring state of New Jersey.

Provisions in Constitutions of New York

The statement that historical, negative, and accidental considerations have had a determining weight in deciding whether other public servants should be elective or appointive requires elucidation. Under the constitutions of 1777 and 1821, several high executive officers of the state were chosen by the legislature.

Choice By Legislature and "the Albany Regency"

It was found, however, by practical experience that this method did not establish responsibility or efficiency in all branches of the government, and that an unofficial system dominated by "bosses" known as "the Albany Regency," had sprung up outside of the government for the purpose of controlling all of the patronage of the state, and had practically taken out of the hands of the legislature and the governor the selection of the high public officers as well as the minor officers.

Direct Election as a Cure for "Invisible Government"

This condition of "invisible" government was largely responsible for the demand for the revision of 1846. One of the tasks that the convention which assembled that year regarded itself as called upon to accomplish was the "abolition" of the system of irresponsible government so far as it was connected with the choice of executive officers under the constitution of 1821. In other words, *negation*, as before, was uppermost in the minds of the delegates. It happened about the same time that Western Europe was disturbed by the agitation against royal and imperial despotism which broke out in 1848 in a series of violent revolutions in France, Germany, Austria, and Italy. This agitation was in one significant respect similar to that which had accompanied the American revolution; that is, it was aimed at the *destruction* of the arbitrary power of hereditary despots. The obvious remedy seemed to be the destruction of the executive. That was the primary task before rising democracies. It was not possible to talk about controlling the executives in the name of efficient democracy until democracy had reduced the executive to such a constitutional position that he could be controlled by law. It was these circumstances—the popular clamor for the abolition of the unofficial despotism of the Albany Regency and the wide-spread agitation against official despotism of European monarchs which reached our shores—that the convention of 1846 made the secretary of state, comptroller,

treasurer, attorney general, state engineer, and the judges elective by popular vote. The one was aimed at the abuse of legislative power, the other was aimed at the abuse of executive power. Both sought to accomplish its end by giving to the electorate a larger sphere of power.

General Acceptance of Theory as Democratic

It is true, the proceedings of the convention of 1846 record a demand that these high officers be made responsible to the people by the establishment of popular election, but it is likewise true that abolition of certain evils was uppermost in the minds of the delegates. They evidently assumed that by transferring the right of election from the legislature to the people the irresponsible and unofficial boss system, which had hitherto controlled the choice in fact, would disappear, on the general theory that leadership is not essential to intelligent operations in such matters. That which was a historical accident then became a dogma, namely, that all high officers, no matter what their duties, must on democratic principles, be elected by popular vote. And the theory has been carried to such a great length that a governor of a western state solemnly declared not long ago that the appointment of the state veterinarian by the chief executive savored of monarchy.

Need for Principle Consistent with Requirements of Responsible Government

Yet those who have applied this dogma so confidently have shown neither consistency nor the courage of their convictions. To speak more concretely, no conclusion or guiding principle has ever been put forth for determining what officers should be elected and what officers should be appointed. No official or determining body has given a reasonable answer to the question: "Why should the state engineer and surveyor be elected by popular vote and the superintendent of public works be appointed by the governor and the senate?"

Standards for judgment in matters of this kind cannot be theories evolved in the closet of the political philosopher. They must come from experience in the successful conduct of affairs. No sensible businessman, who has a large staff of employees under him regards it an invasion of his sovereignty when he surrenders to an expert engineer whom he has selected the power to choose employees who are to work under him. No one who is familiar with practice in governments which are responsive and responsible, will contend that appointment of subordinates by those who are to be held responsible for results, has operated to destroy the principle of representative government. So it is absurd to claim that the people lose their sovereignty if they surrender to the governor whom they elect the right to appoint the state engineer. An obvious retort is: that they lost it when they surrendered the right to elect all the other

officers of consequence in the executive departments. On the contrary, it has been amply shown by experience that no tests of practical democracy require the election of a long list of state officials, if provisions is made for holding the head of the government responsible. As before pointed out, the condition which has given rise to the various experiments and new expedients has been the failure to make positive provisions for utilizing the existing machinery to make governing agents responsive and responsible—consequently the negative provisions employed to render officers harmless when operating under a plan which provides only for irresponsible control.

Advocates of the Present Method on the Defensive

Considering the fact that responsible government has been one in which there has been a single elected or appointed head of administration, either this or a small elected or appointed council, and the further fact that every government in which a large number of administrative officers are elected has proved to be both irresponsive and irresponsible, it is incumbent upon those who would continue this practice to show that it is compatible with democratic theory. Those who claim that the people are fully competent to elect any officer appeal to popular pride, and choose a premise for argument that few in America will deny, but the further claim that the voters may elect ten, twenty, or fifty executive officers at the same time is an entirely different matter. It is showing no disrespect for a man to say that his ability to break *any* stick in a bundle does not imply that he can break at one time as many sticks as may be wrapped together. Few of the champions of the election of a long list of executive officers would go so far as to hold that the voters could actually and effectively choose the five hundred or thousand administrative officers of the state government at one election. From the point of view of the capacity of the electorate, therefore, there must be a limit to the number of officers that can be chosen by popular vote.

Assuming "Electorate" Adapted to Choosing, Not Consistent with Administration

But assuming the electorate is competent to exercise good judgment in choosing ten, twenty or fifty officers out of a list of from twenty to two hundred candidates, a further question is to be answered, viz., whether and to what extent this method of selection is desirable; to what extent may popular election be successfully used as a means of locating and enforcing responsibility; to what extent is it adapted to the development of efficiency. Past experience may be reduced to conclusions that may serve as guiding principles for determining what officers may be elected to advantage and what should be appointed.

Limitations of Electorate

If governing agents are to be made responsive to the popular will through the electorate, then the number of state offices that should be filled by election is naturally confined by the following limitations:

1. No officer should be elected whose powers and duties do not make him important enough to attract and secure intensive and extensive popular interest, concern and scrutiny.
2. Only those officers should be elected who have the power to decide important questions of policy or who are expected to assume leadership in the formulation and execution of governmental programs, for the aim of efficient democratic government is to carry out the will of the electorate and to locate responsibility for doing so.
3. The number of officers elected at any one time should be so limited that the policies and merits of each may receive adequate and effective scrutiny by the voters.

Requirements of Administration

If governing agents are to be made responsible for what they propose as well as what they do—for fidelity, for efficiency, and for economy in the use of public powers and resources—then another principle may be accepted which is quite in harmony with that above stated, viz., that only such officers should be elected as are to act independently; that those who are to act as subordinates should be appointed. If governing agents are to be held to account for fitness of subordinates ample provision should be made to determine fitness and ability to render service, but the means provided should not be such as to destroy official responsibility. If governing agents are to be held to account for efficiency, then the conditions surrounding public employment, such as initial salaries, rights to advances or promotion, tenures, retirement, health and comfort, as well as powers of discipline, should be such as will enable responsible offices in the government to develop and retain experience and expertness in the handling of the many complex and difficult problems of the public service.

Appointment of Subordinates an Essential of Executive Responsibility

There are no abstract principles of democracy or government which are deserving of consideration that do not rest on practical experience. Power, as Senator Root has said, should be commensurate with responsibility. One of the powers essential to the fulfillment of administrative responsibility is the power to determine the fitness and exercise the discipline necessary to direct, control and develop the expertness of subordinates. From this point of view administrative provisions of the present constitution are hopelessly at variance with all principles and all

reasons based on experience. Officers who duties are an essential part of the business to be done, whose action is a necessary part of cooperative action in rendering further services are made independent. Under the present constitution there is no head. The governor, in whom the executive power is solemnly vested, does not possess the means and authority necessary to exercise it. Five of the heads of department are made independent through election. With respect to these the governor has no power to appoint or remove. He may suspend temporarily one officer who is elected by popular vote, but he cannot remove without the consent of the senate many officers whom he appoints with the approval of that body. In short, by reason of the method prescribed for selection, personal responsibility for the conduct of government is so broken up that it is beyond the powers of man to discover it either in individuals or the collective body. (See below, pp. 85-100, for a treatment of the executive department.)

Methods of Appointment

When it is decided that certain officers shall be appointed, the *method* of appointment becomes of prime importance. The underlying reason for appointing instead of electing administrative officers is to locate responsibility and make it enforcible; it is a method adapted to the choice of subordinates. The adoption of the method implies that the appointing officer assumes responsibility for the proper conduct of the appointee. The location of responsibility for appointments depends on placing the power to select with the officer who is to be held to account for the acts of the appointee. Discipline and efficiency are impossible unless adequate power to maintain them is vested in those whom the constitution and public opinion make responsible for securing them.

Present Legal Provisions Governing

Tried by such standards, the present constitution and the system of government created under it, are devoid of plan and principle alike. To the end that this constitutional and statutory confusion of responsibility may be brought home to the reader, a chart giving the exact picture of the methods prescribed by statute for appointing officers is printed on page —. As is graphically shown by this chart, there are at present sixteen different ways of appointing the heads of state departments, bureaus and offices and members of commissions, viz.:

1. By joint action of both houses of the legislature.
2. Partly by joint action by both houses of the legislature and partly by action of the law (ex officio).
3. By joint action of both houses of the legislature and approval of the governor.
4. By separate action of the senate, assembly and the governor.

5. Partly by separate action by the senate, assembly and the governor and partly by operation of the law (ex officio).
6. By the governor with the advice and consent of the senate.
7. Partly by the governor with the advice and consent of the senate and partly by operation of law (ex officio).
8. By the governor alone.
9. Partly by the governor and partly by law (ex officio).
10. Partly by the governor and the mayor of the City of New York and partly by the operation of law (ex officio).
11. Partly by the governor, the state board of charities and the prison commission and partly by operation of law (ex officio).
12. Wholly ex-officio
13. By the fiscal supervisor and one of his appointees and by superintendents who are not his appointees
14. By self-perpetuating bodies
15. By the court of appeals
16. By the supreme court

Purpose—to Prevent Responsible Leadership

If there was any doubt as to the lack of plan or purpose in developing methods of appointment, no further evidence is necessary to carry conviction. Moreover it is clear that the responsibility for this chaos rests largely upon the legislature in the absence of constitutional treatment. It is clear that the controlling consideration in the legislature in prescribing methods of appointment has not been to make the government responsible directly to public opinion or to make anyone responsible for leadership, for fidelity, or for efficiency and economy in carrying on the business of the state. It is equally clear that the dominant motives have been to prevent responsible leadership, to diffuse authority and to set one officer up against another so that no agent could have any power to do harm. However useful the constitution and the laws governing appointment may be as instruments of negation, there can be no doubt that they are wholly unadapted to meeting the increasing and changed demands made upon the government for service and for rendering efficiently the duties undertaken.

Constitutional Provisions Determining Qualifications and Fitness

As in private employments, the determination of the qualifications and relative merits of persons who are available for employment or already in the service is a matter of primary importance. The difficulty of forming any genuinely helpful rules for guidance is great owing to the subtle human elements involved. Nevertheless there are certain general principles that may serve to guide. The first of these is that any

methods devised for determining ability and fitness must be adapted to the methods of choice imposed upon those who make the selection. A second is that it is necessary to differentiate between offices which are technical or routine in character and those which involve managerial discretion and the settlement of important matters of policy. A third is that facilities should be afforded for prompt removal of persons who show infidelity or who by a practical test or record of work done have shown incapacity.

Requirements of Elective Officers Fortuitous

Where officers are made elective, it is only natural that political considerations should determine the chief qualifications imposed. If offices requiring technical or professional training are filled by popular vote it sometimes happens that other considerations are entertained by constitution makers. In New York the following constitutional provisions govern the qualification and fitness of elected officers:

1. Citizenship and age—applicable to the governor and the lieutenant governor
2. Training and experience—applicable to the state engineer and surveyor (and to judges)
3. Residence—applicable to the governor and the lieutenant governor

The constitutional requirements are either unnecessary or are inadequate. For example, what reason can be advanced for prescribing in the constitution the qualifications of the state engineer, and omitting all mention of the qualifications of the attorney general and other officers who, to perform efficient service, must have professional training and experience?

Requirements of Appointed Officers and Employees Inadequate

Adopting the grouping above suggested, viz.: officers who have confidential, managerial or important discretionary powers and those whose duties are merely technical, professional, or routine in character, only two officers of the first group are named by the constitution—the superintendent of public works and the superintendent of prisons. In neither case are any qualifications prescribed. Although the constitution stipulates that the state engineer and surveyor who is elected by popular vote must be a practical civil engineer, it does not prescribe qualifications for the superintendent of public works, whose duties call for high technical and professional skill. When offices falling within the first group are created by legislative action, it is commonly the practice to leave the determination of qualifications and fitness of incumbents wholly to the officer empowered to select them.

Prescriptions of Merit System Defective

The main body of appointed civil servants who fall, of course, within the second group mentioned above, are subject to the provisions of Art. V, Sec. 9, so far as qualifications and fitness are concerned. This article stipulates that:

> Appointments and promotions in the civil service of the state * * * shall be made according to merit and fitness, to be ascertained, so far as practicable, by examinations, which, so far as practicable, shall be competitive; provided, however, that honorably discharged soldiers and sailors from the Army and Navy of the United States in the late Civil War, who are citizens and residents of this state, shall be entitled to preference in appointments and promotions without regard to their standing on any list from which said appointments or promotions may be made. Laws shall be made to provide for the enforcement of this section.

Limited to "Examinations" as a Test for Promotion

It will be seen from the provision that the test of qualifications and fitness for appointment and promotion here established is to be determined, so far as practicable, by competitive examination. Experience under this constitutional requirement, while in many respects highly satisfactory, has raised grave doubts as to the desirability of limiting the judgment of comparative merits to the results of "examinations." The convention may quite properly consider whether there are not other tests, such as educational and professional experience and practical experience in private affairs along the line of the duties of the public positions sought, which may with safety and good effect be introduced into this section. This is particularly true of promotions in the service which rest upon another basis than that of new appointments, in that some tests of actual ability shown in official work may be applied.

Gives Soldiers and Sailors Preference Without Regard to Standing

Certainly there is grave doubt as to the desirability of injecting the proviso that certain soldiers and sailors shall be entitled to "preference" in appointment and promotion without regard to their standing on any list. The welfare of the state is quite as much affected by efficient civil service as it is by honorable military service. Furthermore, honorable military service is no evidence of fitness or qualification for performing one or another of the hundreds of different kinds of civil service—many of which are highly technical in character and require for their efficient performance specialized training and cumulative experience. To incorporate in the constitution a provision such as this is destructive of the whole purpose behind the popular demand that led up to the adoption of the merit system, and it is only done for reasons other than the betterment of the public service. If soldiers and sailors are of equal competence with civilians, they need no preference. If they are not, the provi-

sion that they shall be preferred without regard to their standing on any list means the relaxation of discipline, the loss of faith on the part of other employees that they will be fairly dealt with, the loss of respect for the service by the men who are called upon to do the work of the government, and the lowering of the morale of those who have hitherto rendered honorable service.

Makes for Official Irresponsibility

Considering the matter, therefore, from the point of view of justice to the public interest, and to those who have spent their lives in the civil service of the state, the provision is equally indefensible. The federal government has already provided liberally for the soldier and sailor in recognition of their honorable services. For similar reasons the state looks after their declining years by maintaining homes for them. If the state has further obligations to those who have been retired from the military service, it would be better for the military service and for the civil administration if the government should frankly grant to such soldiers and sailors pensions to equal the salaries they draw, than to continue the policy of preference wholly unrelated to fitness or quality of work done. There can be no doubt that such a preference makes for official irresponsibility and for individual incompetency by setting up conditions that are incompatible with the efficient handling of public business.

Methods of Removal

No argument is necessary to show that the system of removals from office has as much influence upon the efficiency of the personnel as the system of appointment. An examination of the present provisions, constitutional and statutory, for removals shows the same confusion and lack of reasoned purpose which we found in the case of methods of appointment. The various methods of removal now employed in the state government are as follows:

1. The general power of removal by impeachment is vested in the assembly on conviction by the constituted court of trial in such cases. The expense and unwieldy character of this process of removal make it useless except in cases of charges against high officers.
2. The governor may suspend but not remove the treasurer for violation of his duty.
3. The governor may remove the superintendent of public works and the superintendent of prisons and some statutory officers, without the consent of the senate.
4. The governor may remove a great majority of the important statutory officers only with the consent of the senate.

5. Appointing officers, such as the superintendent of public works and of prisons, are frequently given the power of removing important subordinates summarily.
6. In some cases, the officer making removals is limited to removals for specified causes, and in other cases by general provisions, such as the requirements of the public interest or the unfitness of the incumbents, and in still other cases by no restrictions susceptible of precise definition.
7. In some cases an officer making removals must show specific causes and give the person whose removal is sought an opportunity to be heard; in other cases a statement of the reasons for the removal of an officer must be filed somewhere as a matter of record only, without affording the person removed an opportunity to be heard.

Not Consistent with Provisions Governing Appointments

In order to illustrate graphically the system of appointments and removals, so far as the definition and enforcement of responsibility are concerned, a second chart has been prepared which is designed to show both these relations (pp. —). On this chart the methods of removal are shown at the top of the lines running to numbers showing sixteen different methods of appointment. Reference is made to the same list of departments and offices as far as the methods of removals could be ascertained within the time available. To show these in combination, by a more general grouping, chart —, p. —, has also been prepared.

Provisions Relative to the Tenure of Public Agents

In seeking to secure responsiveness, responsibility and efficiency in government, the matter of the tenure of public agents becomes of prime importance, and calls for consideration with reference to constructive standards rather than the idea of preventing usurpation on the part of a hereditary monarch.

Responsiveness required that the government should accurately reflect popular opinion on all fundamental matters. Changes in that opinion will have no necessary relation to the rotation of the earth on its axis or around the sun, and to secure responsiveness, therefore, it is not imperative that elections should be held every year or every two years. If a government truly represents the electorate, there is no theoretical reason why it should be subjected to the interruption incident to a campaign or the course of industry and business should be disturbed by an election which leaves the same party in power.

Frequent Elections

The practical objection, however, is that it is difficult to discover when any particular government accurately represents public opinion and that if some authority were vested with the power of deciding when an election should be held it could readily enter into ways of usurpation. Indeed, it was this practical objection which led the founders of American governments to adopt the principle of "frequent elections." Previous to the Revolution, the tenure of the governors in the royal colonies was at the king's pleasure and those governors had the power of dissolving the assemblies and calling new elections. When the royal element was eliminated and elected governors were created, the fear of the royal executive which formerly entertained was carried over to the elected executive, and the power of appealing to the voters to ascertain popular will at any one time was taken away altogether. Lest usurpation might occur, it was thought better to risk the waste of frequent elections which resulted in no material changes rather than to invite the dangers incident to long possession of power.

Longer Tenure and Provision for Reference of Issues to Electorate

As confidence in democracy advanced, however, it was seen that the fear of the executive which had been entertained when he was a royal officer was unfounded when he was elected by popular vote. Accordingly, the term of the governor was quite generally increased from one year to two and in many instances to four years, although in New York it has been reduced from three to two. It would seem that by this time confidence of democracy in its own capacity for self government had advanced far enough to grant to elected officers and agents of the government four year terms, particularly if a method is provided for getting issues on which there is a deadlock before the people by call of the executive or other means of "recall." (See below, p. 74.)

Present Tenures Not Consistent with Requirements of Responsive, Responsible and Efficient Government

At all events, from the point of view of responsiveness, the present constitution which gives to the senators and the governor a two years' term and to the assembly a term of a single year is indefensible. It was not devised for the purpose of making the government responsive but to prevent it from being immediately responsive. The senate was originally a class body representing the landed class of the state, and it was given a longer term in order to endow it with greater weight against the more popular house, the assembly. When, however, the two houses were placed on the same basis as to the suffrage (see above, p. 18), this reason disappeared, but the longer term was preserved in order to prevent

the government from responding immediately to a popular election of assemblymen.

The confusion introduced by this system is of course apparent. If the election of assemblymen results in the return of a party in opposition to that in control of the senate, friction, irresponsibility and, usually, contemptible petty politics result. If the election of assemblymen returns to power the party in possession of the senate, no good has accrued to anyone, and the state has been put to an enormous expense. The same reasoning applies to the introduction of any diversity of terms in the case of the governor and the legislature.

From the point of view of responsibility, it may be said that the shorter the term the slighter are the opportunities for the incumbents to learn their duties and, therefore, the less the justification for imposing any genuine responsibility upon them. If, however, a long term without possibility of removal is introduced, the greater is the opportunity to shirk responsibility when power is once secured. Of the two evils, the former, namely, the short term, is open to the more serious objection: it has been tried and found wanting. Unless the new constitution, like all former constitutions, is to be founded on the principle of negation, it should risk an experiment of greater promise, surrounded by proper safeguards.

When responsibility and efficiency are taken into consideration, there is a special objection to diversity of terms within the executive department of the government. It is a matter of common observation that no sane person will assume responsibility for the effective conduct of a large enterprise if he has no power over the selection of the important subordinates who are to assist him. Yet, when a governor is inaugurated in New York, and undertakes the exercise of the executive power vested in him by the constitution, he finds himself at the head of a staff of officers already installed for two, three, four or five years, as the case may be, and able to resist his power of removal in most instances by political combinations in the senate. So far as the constitution is responsible for this violation of the ordinary rules of business enterprise, it cannot be criticized too severely. (See below, pp. 91-92.)

This system of overlapping tenures, so far as it is founded on principle, is based on the theory of negation, namely, that the governor cannot be entrusted with power adequate to discharge the trust imposed in him. In a large measure, however, it is the result of accident, temporary expedients and party considerations. Whatever the reason, it is incompatible with constructive principles of government based upon practical experience in the conduct of private affairs.

Conditions of Public Employment

Provisions Governing Promotion in the Public Service

In forming a government which, it is hoped, will make for greater efficiency in the public service, the fundamental task of providing methods for maintaining an administrative personnel of high quality, requires a careful review of the question of how to make it possible for able men and women to find careers in official life, through an orderly and equitable process of promotion. That the shifting of civil servants to private employment is responsible in a large measure for the constant derangement of public business has often been the subject of remark and requires no extended comment here. In searching for the cause of that evil, many discerning men have traced it to the lack of that opportunity to rise in the service of the state which is afforded in private life, in other words, to an absence of proper facilities for promotion to high positions in the government. This affects the entire service, for efficient work in the lower branches is not to be expected where no human rewards are to be expected from it.

This continual transfer of able civil servants to private life weakens administration in a manner still more serious; it cripples the government in dealing with powerful private agencies, because the servants of the former are all too often rewarded by promotions to the service of the latter when they are sufficiently pliant. Where the state must, in the exercise of its police and other powers, constantly antagonize private interests, it can only hope to perform its tasks well by possessing a body of loyal officers and employees who look to the public service for their careers and not to private employments. The changed circumstances of modern economic life, therefore, require that the government shall have a body of trained servants whose first loyalty through a life career is to the state and not to private interests. In order to establish and maintain this body, provisions must be made for a system of promotions that will quickly reward loyal and efficient service to the state. In the face of such a problem, the mere provision that promotions, so far as practicable, shall be based on examinations is pitiably inadequate.

The civil service reform movement, when launched nearly half a century ago, was primarily negative in character. It was concerned with the "overthrow of the spoils system," to use the favorite slogan of the time. It has only been within the last few years that a constructive ideal has begun to appear in the study and formulation of a complete program for surrounding the official personnel of the government with those conditions which not merely prevent partisan evils, but are at the same time conducive to the highest standards of responsive and efficient government. This constructive program, although in the early stages of its development, is now occupying the interest of all persons who seek

the establishment of responsive and efficient agencies of government. Clearly, therefore, the constitution should be tested by the standards of a constructive program rather than the expedients of party advantage combined within faith in negation.

Provisions Relating to Standards of Compensation

Justice demands that compensation, the payment for the service rendered, be computed on the same standard for judgment as the value of such service. But the state has done little to apply this underlying principle to the authorized employments of the competitive or exempt branches. Throughout the service the greatest disparity exists in the compensation paid for similar grades of work. Those employees receiving the relatively lower rates of compensation feel the inequalities as a matter of personal discrimination. Discontent has resulted and the morale of the service has been undermined.

Lack of Businesslike Basis for Fixing of Compensation and Work Requirements

In the history of the state government there has never been—and there is not at the present time—an exact logical basis for fixing salary rates or titles of positions. Standards of compensation for specified kinds of work as a basis for making salary appropriations are unknown. Furthermore, positions are created for the most part without any definition of the work requirements or any real understanding of the departmental needs to be met. Civil service employments are, from the viewpoint of salary standards, in a chaotic state. The titles of civil service positions are misleading. Similar titles are applied to positions entirely different in character; different titles are attached to similar positions. The greatest disparity in compensation exists with respect to work of the same character or grade. Efficient service of a high grade, in a very large number of instances, receives but a low (and inadequate) rate of compensation; service of a low grade in an equally large number of cases receives a large (and excessive) rate of compensation. In other words, compensation bears little reference to the service rendered.

This lack of uniformity with respect to compensation and lack of exact definition of duties have in themselves led to waste. Overlapping of the jurisdiction of employees within an office has resulted in wholly unnecessary duplication of work. Confusion in office and field practice, inconsistencies and lost motion are found in every division of the service. Furthermore, these wasteful conditions bear close relation to even more wasteful practices. For they indicate a general laxity of administration by the legislature which has multiplied employments without reference to the service needs.

Summary of Principal Defects in Employment Conditions

The principal defects which have resulted from this lack of a businesslike basis for fixing compensation and work requirements may be summarized as follows:

1. Lack of equitable or logical rates of compensation.
2. Prevalence of misleading titles with resultant confusion of work and wasted effort.
3. Prevalence of unnecessary positions and employments.
4. Want of due consideration of all the conditions relative to the welfare and comfort of employees for which scientific management calls.

Summary of Related Defects

The establishment of standards of compensation and proper specifications of duties for the public employments is fundamental to effective civil service control and regulation. In the absence of these standards the civil service commission is unable to formulate a program which will be of real value either to the management or the personnel. As long as the above conditions exist there will be no exact basis for the selection, promotion, treatment or dismissal of employees.

The defects in the present system of civil service control and regulation which have resulted directly from the lack of standards of compensation and specifications of duties may be summarized as follows:

1. Lack of proper basis for the selection of employees by the civil service commission.
2. Lack of proper basis for the advancement or promotion of employees after selection; lines of promotion are not established; individual performance is not appraised and rated; no means are provided for the advancement of an employee while performing a certain kind of work on the basis of seniority and efficiency of service.
3. Lack of proper basis for dismissal or discipline of employees

The uncertainty and injustice which result from such chaotic conditions narrow and limit the outlook of civil servants who feel that the civil service is not holding out proper rewards for meritorious service. As a result a condition of stagnation and indifference prevails.

Causes for Present Conditions

Civil service relationships and conditions of employments in the state of New York have been reached as a result of a development extending over the last century. This development has not been along the line of any defined plan or program. New employments have been authorized and existing employments modified as the functions of the

state have been expanded. This expansion represents a gradual evolution or transition—a more or less uncontrolled and inconsistent growth which has had very little reference to the real needs of the service. At no time has there been a truly intensive study of the employment conditions with a view to the enactment of rules and the installation of procedures which would place the public service on an economical basis.

It is true that during the last forty years the state employment conditions of New York state have been subject to the regulation and control of civil service commissions to whom have been entrusted the application and enforcement of merit principles. Up to the present time, however, the primary object of such control has been to remove abuses which were common to the spoils system. In this respect progress has been made. But the positive side of civil service control which contemplates the installation of standards of compensation, entrance and promotional examinations and a sound basis for discipline, removal and retirement have been largely neglected.

Steps Taken to Improve Present Conditions: the Senate Committee on Civil Service

The Senate Committee on Civil Service was created pursuant to resolution of the senate under date of February 15, 1915. This resolution provides that the Committee on Civil Service should have jurisdiction over all matters relating to civil service control and regulation. It may be said, however, that one of the principal objects and aims of the creation of this committee was to study employment conditions of the state civil service in order to formulate a basis for reclassifying civil service positions by standardizing salary grades and rates.

In accordance with the resolution establishing this committee, steps were taken to assemble data which could be used as a basis for the standardization of salaries and positions of employment in the state civil service. The information so collected was made the basis of a preliminary report characterizing present conditions and pointing to the need for further and more intensive investigation. An appropriation of $25,000, requested for this purpose, was made and the Senate Committee has organized an investigating staff for the prosecution of this work. This committee will report its findings and recommendations to the state legislature at the beginning of the year 1916.

CHAPTER V

THE STRUCTURE OF GOVERNMENT, AND THE POWERS, DUTIES AND LIMITATIONS OF OFFICERS

Need for Preconception of Structural Plan

In laying the foundation for a government, there must be some preconception of the kind of superstructure that is to be erected. In any plan for the management of representative government, as well as for the management of a private business, some definite notion must be entertained with respect to the organization or institutional methods for determining what is to be done and the organization or institutional methods for doing it. In fact, it may be said that this subdivision of duties and responsibilities is an essential to the successful operation of representative government. The prime reason for separation of the representative body from the executive is to provide a means whereby those who must settle questions of policy, shall have no direct responsibility for carrying them into execution, and may therefore act as independent critics of the administration. In other words, the underlying purpose of a representative system is not merely to reach decisions with regard to public policies, but also to provide the machinery for enforcing responsibility for acts of "the administration," which means "executive responsibility."

Common Structural Essentials of a Representative System

The common essentials of representative government, as previously stated, are (1) a numerous non-official personnel to perform the functions of an "electorate," and (2) a "representative" body which meets at stated times to discuss questions of public policy and reach decisions by vote as need for decisions may currently rise. The representative character, however, does not determine the organization or method for execution.

Types of Organization for Administration

Having provided for making the government representative, some means must be adopted for executing the policies and carrying on the business authorized. The expedients adopted in the organization of representative government for doing this work have been many. Broadly, organization for purposes of administration may be reduced to three general types, viz.:

1. *Administration by legislative committee or commission*—a type in which the elected body of representatives is made responsible for administering the business either directly

or through a committee, and in which no provision is made for a separate executive or administrative branch.

2. *Administration under a responsible chief executive*—a type in which both representative and executive branches appear, the chief executive being looked to for leadership and both branches being made responsive through provisions for submitting irreconcilable differences directly to the people.
3. *Administration separately organized but not under a responsible chief executive*—a type in which both an executive branch and a legislative branch appear, without any provision being made for responsible executive leadership or for the submission of irreconcilable differences to the electorate for decision.

THE COMMITTEE OR COMMISSION TYPE

Constitutions or governmental structures in which no provision is made for a separate executive branch are of two general classes, viz.: those which have been employed as revolutionary expedients and those which have been adopted for purposes of local self government.

Revolutionary Expedients—English and American

Of the first class, the most notable have been those governments in which the supreme power has been placed in a large body of official representatives, and the administration has been organized by this body under committees appointed by it, or has been left to other agencies over which they have had substantial control. Examples of this form of organization are found in the revolutionary parliament and committees of safety in England from 1642 to 1659, and in the representative bodies and committees of safety in America after the declaration of independence and before the states were permanently organized.

American Committees of Safety

Says Hunt in "The Provincial Councils of Safety of the American Revolution" (pp. 9-10): "When the American colonists laid by the petition for the musket * * * the executive attempted to silence the insurrection by dissolving the assemblies. But the people found other channels of expression. Representatives to colonial conventions were elected and gradually assumed entire control. These conventions served the purpose of deliberative and legislative bodies as well as the former assemblies but it was difficult for them to perform executive duties on account of their size. Moreover, it was impossible to keep such large bodies continually in session and in the frequent recesses and the intervals between a dissolution and the meeting of a new congress there was need

for some system by which the government could be carried on without interruption. It was to meet these wants that the conventions appointed committees of safety during the earlier years of the revolution. They served as the chief executive * * * in the transition period from colonial to state government." Under the same circumstances the "Confederation and Perpetual Union of the United States of America" was organized. The "Articles of Confederation" of the original thirteen states provided that "the United States in congress assembled" should have the sole and exclusive right of directing the land and naval forces; and that the business of the confederation should be administered by Congress, or in their recess by a "Committee of the States," to consist of one delegate from each state.

The Failure of Committee Systems

Such forms of organization where used as state and federal agencies, have in every instance broken down. While they have been adapted to making the government responsive, they have not been adapted to making it responsible for leadership, for fidelity, efficiency and economy. Their failure in New York is virtually admitted in the first sentence of the preamble of the first constitution of the state adopted in 1777, which runs as follows:

> "Whereas, many tyrannical and oppressive usurpations of the King and parliament of Great Britain on the rights and liberties of the people of the American colonies had reduced them to the necessity of introducing a government by congresses and committees * * * * * * * * * * *
>
> "And, whereas, many and great inconveniences attend the said mode of government by congresses and committees, as of necessity, in many instances, legislative, judicial, and executive powers have been vested therein * * * * * * * * *
>
> "This convention, therefore, in the name and by the authority of the good people of this State, doth ordain, determine and declare that no authority shall, on any pretence whatever, be exercised over the people or members of this State but such as shall be derived from and granted by them * * * * * * * *

It is clear that the legislative committee system of administration was originally a mere expedient of revolutionary times. Nevertheless, it has exercised a profound influence on the course of our constitutional and legislative development, although it was avowedly a temporary device resorted to at a time when executive power had been thrown into confusion by armed resistance. Domination of the administration by legislative committees is to-day a conspicuous and disastrous feature in American government.

The Commission Form of Government

The "commission form of government" as the term is now understood differs from the revolutionary expedients in this, that the represen-

tative body is made extremely small, the thought being that when there are only a few members in a legislature, responsibility for the exercise of executive and administrative functions, may be safely entrusted to them. Although several hundred cities have recently adopted this form, there is grave apprehension that the venture will not prove permanently satisfactory, because it deprives the community of an independent representative agency or branch of government charged with responsibility for review and criticism. Discontent with the system is becoming manifest in many places where movements are on foot to reintroduce the separate executive by providing for what is called a "city manager."

A few private institutions have been successfully managed without a separately organized chief executive, but in each such case the president or chairman of the board has become, in fact, the chief executive thereby providing for responsible leadership and personal direction and control of the several heads of administration.

Administration Under a Responsible Chief Executive

The second general group of governmental agencies which employ a representative system is characterized above as a type "in which both a representative branch and an executive branch appear, the chief executive being looked to for leadership, and both branches being made responsive through provisions for submitting irreconcilable differences directly to the people."

Distinguishing Characteristics of Type

This type has as many local adaptations as there are institutions within the type, but each has the following distinguishing characteristics. In each case provision is made for executive direction and control over the personnel in the conduct of public business. In each case the constitution provides for institutional loyalty and co-operation through the principle of "solidarity" in executive responsibility or agreement between administrative heads before any plan or proposal is submitted as a government measure. In each case provision is made for prompt reference to the electorate of irreconcilable issues arising between the executive and a majority of the official representative body, thereby making both branches responsive to public opinion.

All Responsible, but Differing Degrees of Success in Development of Efficiency

The degree to which the different governments of this type have become responsive and responsible has varied according to the expedients used. In England, for example, there can be no doubt as to the responsiveness of the government to popular demand, except in so

far as the permanent tenure of the members of the House of Lords and the long tenure of members of the House of Commons have interfered. But in case of continued controversy the Lords may be overruled by the House of Commons, and the life of the House of Commons may be brought to an end at any moment by dissolution. In England there can be no doubt as to responsibility for leadership; on the other hand, there has been a certain indifference to the need for adopting expedients that are essential to efficiency and economy, a fact perhaps explicable by taking into account the contentment of the British with long established customs and their regard for the conventions that have grown up around a hereditary ruling class in a highly stratified society. In France the government is also responsive. Responsible executive leadership has also been established both in the election of the president and the prompt retirement of the cabinet in case of failure to retain the support of a majority of representatives. There the ancient social stratification has in a measure given way to expedients for making the administration more efficient and economical. In Germany adaptations for responsiveness to public opinion have not been as completely developed as in France and England. Leadership there is also made responsible; but in last analysis this does not rest so directly on a vote in the representative branch, but depends on the ability of the Kaiser and the Chancellor to sense the public opinion. There the best known expedients which make for efficiency and economy have been developed and applied to a degree unknown outside of privately organized establishments, with the possible exception of Japan. Without suggestion of invidious comparison, these references to experience are made to call attention to the fact that the second general type of organization for management has proved adjustable to the most varying political conditions, and that this type is adapted to securing effective popular control, responsible leadership, and honest, efficient and economical transaction of public business.

An Independently Organized Administration Without Leadership

The third type of government in which separate executive and legislative branches appear without any provision being made for responsible leadership or for submitting irreconcilable differences to the electorate is to be found in all of the American states, and is, in a somewhat modified form, the basis of the federal system. It may be said with safety that of all the countries of the world in which democracy has made any considerable advances, the United States is the only one that retains this type. It is true that the governments of the South American republics are modelled on this form, but at times they have not been representative, that is, have not always succeeded in preventing executive usurpation. In the United States the essential advantages of a strong executive held to responsible leadership have been destroyed, whereas in countries possessing the second type the executive department has been conquered, not destroyed, and it has been made both responsible and efficient.

The Mechanism for Making Management Responsible Recent in Its Development

The predominance of this third type of representative government in the United States may be ascribed to historical accident rather than to any reasoned consideration and rejection of the second type. At the time of the establishment of American independence, when statesmen were forming state governments and creating a union, the principle of popular representation was accepted in the United States and in England but the technique for the enforcement of executive *responsibility* had not been worked out and applied. While the Revolutionary War was a part of the struggle for the general principle of popular control, it occurred before a mechanism for making the executive responsible had been devised and installed. At this very time George III was resisting and resenting popular interference with his executive perogatives—he was trying to defeat the efforts of politically organized constituencies to determine what the executive should do. He did not openly attack the representative system, but sought to destroy all sense of solidarity among the members of his own cabinet as the responsible head of the administration, and destroy their leadership as popular representatives. When George III came to the throne this policy was relatively easy to carry out, because the idea of responsible leadership was only hazily grasped. A considerable number of the members of the cabinet were not regarded as having any responsibility. "In the Grenville Ministry, which lasted from the spring of 1763 to the summer of 1765," says Anson, "the business of the government was settled at weekly dinners, at which only five or six ministers were present * * *. The cabinet of Lord Buckingham in 1782 would seem to be the first in which there were no non-official members. It consisted of 11 persons, each holding high political office." Lord Buckingham himself is reported to have said of his fellow members, when discussing the ability of the cabinet: "I could chase the hare with a pack of hounds but not with a lot of lobsters."

The English Rule Limiting the Cabinet Personnel to Responsible Officers Not Adopted till 1801

It was not till 1801 that the rule was established in England which limited members of the cabinet to persons holding responsible offices, and England at that time was the most advanced of all nations in the development of methods for making the executive responsible. Responsibility then came to mean also liability of executive heads to lose their official positions in case they as a cabinet could not join in every administration proposal submitted. If a minister differed from his colleagues he was

expected to resign or to be held responsible for what the cabinet did as a group. Responsibility was made collective and leadership was made responsible by providing that the cabinet should present a solid front in dealing with the legislature.

A Single Responsible Head Not Recognized in England till after the American Revolution

The necessity for a prime minister or head of the administration was not recognized until after the American Revolution, and it was not until after 1832 that the prime minister came in fact to be the choice of a body acting as an electoral college—persons chosen by the electorate who had delegated to them the power to select a chief executive.* That is, it was not until after the passage of the Reform Bill that the Commons came to be fairly representative, and the cabinet was made wholly dependent on retaining the support of a majority of the representatives of the people.†

The Mechanism for Carrying Issues before the Electorate Not Perfected until after 1832

After responsible and collective leadership was firmly established in the cabinet, the final step in the development of the system was the adoption of the expedient of submitting irreconcilable differences between the executive and the legislature to the decision of the electorate. This step was not firmly taken until about the middle of the nineteenth century. Speaking on this point, Anson says: "There was no instance before 1830 of a ministry retiring because it was beaten on any question of legislation or even of taxation. So late as 1841 Macaulay maintained in the House of Commons, speaking as a cabinet minister, that the government was not bound to resign because it could not carry legislative changes, except in particular cases where they were convinced that without such and such a law they could not carry on the public service."

Means for Making Control through Representatives Effective, Not Generally Adopted in Europe till after 1848

It is also a matter of peculiar interest that the Revolution of 1848 and other political disturbances in Europe which occurred in the middle of the last century had very largely to do with the establishment of the principle of executive responsibility in the continental governments of

*In establishing our federal constitution, a separate electoral college was provided for. In most countries, the regular representative body is used for this purpose. Our electoral college meets once, casts a vote and that is the end of it; the parliamentary electoral college is a continuing body, always available to perform the electoral function.

†Before the passage of the Reform Bill the Commons was largely under the domination of the executive, through his ability to control the "rotten boroughs" and the use of other questionable means.

Western Europe. Each of these has a representative body. To this body is given the power to determine policies and settle what the executive may do. But in each the executive must lay before representatives what is proposed by the administration. Each of them holds the executive to account for working out details and for doing things for which approval has been given, but withholds the power to proceed without consent of a majority of representatives. In developing methods for making the executive responsible, each has resorted to the expedients that were commonly known by the people to have been effective in management of affairs, both public and private. For the purpose of making a government responsive, all, with one or two exceptions, insisted on the establishment of a political system that would provide—

1. For the election of representatives.
2. For giving to these representatives the means for knowing what was being done.
3. For enforcing the prompt retirement from the executive service the heads of administration who do not retain the confidence and support of a majority.

And in order to definitize responsibility, each provided for a prime minister who was held to account for formulating and submitting the plans or proposals of the administration and who could be held responsible for the honesty and qualifications of the personnel of the administration, for the efficiency and economy of management.

The Isolated Development of the American Type of Representative Government

The American system of government was not only established before the development of those institutions for making executive leadership effective and at the same time thoroughly responsible, but it was established under circumstances which were wholly abnormal, namely, during a revolutionary condition of affairs produced by a popular struggle against irresponsible executive authority exercised through agents of the British crown. The executive branch of the government in all of the American colonies, except Rhode Island and Connecticut, was vested in authorities entirely beyond the control of the electorate, that is, in royal governors in the provincial colonies and in proprietaries in the others. It was on the executive branch essentially that the colonists waged their war for independence. For them it was not then a question of controlling but of destroying the executive arm.

Accordingly when they came to framing state constitutions, they usually provided that the governor should be a mere minion of the legislature (Massachusetts and New York being the two marked exceptions), elected by that body for a short term and stripped of all powers for

leadership and responsibility. In some of the states even the term "governor" was regarded as odious and insulting to democracy and the milder term of president was used. Nowhere except in Massachusetts was the executive given the straight veto power. Everywhere he was regarded with suspicion and distrust.

All Real Gains in American Government Have Been in the Direction of the Second Type

Although the ideas of the Revolutionary period have on the whole dominated our state constitution makers, there have been some departures, and as far as these have been real gains in responsible and efficient government, they have been in the direction of the second type of representative government. The governor has been made independent of the legislature and given larger powers and responsibilities. These have been substantial gains, but it now remains for the convention of 1915 to apply to the solution of the problem presented the experience of other countries and of the practical business world.

The Fundamental Question for the Convention

Inasmuch as the whole course of political evolution in other advanced democracies has been in the direction of responsible and efficient executive leadership, and inasmuch as substantial gains in American government have come from halting steps in that direction, the constitutional convention is called upon to answer this fundamental question: "Is it desirable to retain a system of government that secures only irresponsible and invisible leadership or should cognizance be taken of the expedients which have been developed during the last hundred years for making leadership effective and responsible." The discontent with and organized opposition to the present system are obvious. From the point of view of democracy it is unsuccessful and from the point of view of business management it stands universally condemned.

CHAPTER VI

ORGANIZATION AND PROCEDURE OF THE LEGISLATURE.

There are many variations in organization—as many as there are institutions. It is not to be assumed, therefore, that there is only one best form, or that the organization and procedure in any particular details are best suited to the work to be done by a state, because the social, economic, physical and other environmental conditions which must be taken into account differ in each political jurisdiction. There are three conclusions with respect to organization, however, that may be accepted with confidence, viz.:

1. That in making constitutional changes those expedients which have uniformly worked well should be considered.
2. That the devices and adaptations which have universally worked badly should be discarded or, if continued, should be retained only for lack of something better.
3. That whatever be the general design of the mechanism for doing business, every part should be in harmony with and complementary to every other part.
4. That each part of the machinery of government should be adapted to performing the service for which it was intended.

Indictments of the Present Organization and Procedure of the Legislature

Attention has already been called to the fact that one of the essential functions of a representative body, whether in government or in private corporate organization, is to make officers who conduct the details of the business, responsive and responsible. Without such an official body, those who do things and are responsible for what is done must deal directly with the electorate or the membership; without such an official body the electorate or membership is put to the disadvantage of not having a permanently organized reviewing and approving agency to bring before it specific and definite matters of policy concerning which there may be differences of opinion. Attention is also called to the fact that the constitutional character given to the representative body has been such that it has operated to defeat many of the fundamental purposes of a representative system. Against the present organization and procedure three indictments may be laid:

1. That they are of a kind that has uniformly worked badly.
2. That they are not adapted to doing the work for which they are intended.
3. That they are not complementary and supplementary to the other working parts of the government.

The Organization and Procedure Have Worked Badly

Our political institutions have been on trial before the people and found wanting. It is for the members of the convention now to cure the obvious defects. Defects in provisions with respect to the "electorate," with respect to the conditions governing public employment or surrounding the "official personnel," and with respect to the general structure, have already been commented on. It remains to discuss more concretely the defects in the organization and procedure of the legislative, in the organization of the executive, and in the several administrative departments and offices.

The first indictment (that the organization of the representative body is of a kind that has uniformly worked badly) may be passed without further proof than is already before the people. Past legislative performance has been of such a character as to cause many persons to lose confidence in representative government itself. Instead of "responsible government," we had "invisible government"; instead of responsible "leadership," we had a personnel that is dominated by "spoils" and "patronage"—discipline being administered from without; instead of efficiency, we had inefficiency and waste of public resources to a degree that have caused citizens to conclude that even the most pressing and obvious public functions should not be entrusted to the government; instead of a government that is responsive to public opinion, our public institutions in many respects have been irresponsive—in fact we have not developed any effective official means of formulating, expressing and enforcing opinion on matters of large moment.

Experience in Other Governments Similarly Organized

Nor is there any reason for thinking that these results have been due to social, economic or other conditions peculiar to the State of New York. The people of every state in which the same type of legislative organization and procedure has been used have had the same experience. Results obtained by every government, and by every private institution that has adopted similar methods have proved just as disappointing. Under circumstances of this kind it behooves those charged with responsibility for determining whether it shall continue either to inquire into the reasons why the mechanism has worked uniformly badly or to discard it without inquiry.

Not Adapted to the Work to be Done

The principal function of the legislature is to reflect public opinion on questions of policy. A body whose function is to express public opinion should be so organized that the interests and opinions of the state may be precisely represented in the membership. It may be accepted as a principle that a legislative body is representative only as it provides

for two things: a membership representing constituencies, so that the body itself may reflect the opinion of constituents on matters which have not been referred to the electorate; and a membership which may keep in contact with citizenship, so that it can have independent judgment on questions currently raised for discussion and a vote.

Present Membership Represents Territory and Not Constituencies

The present membership of the legislature does not represent constituencies in any sense which will enable it accurately to reflect opinion on statewide matters; it represents territory. Its selection is based on geographic lines.

Territorial Idea Originally Justified

The reason for geographic representation is purely historic. When representative government originated, it was the result of opposition that was locally organized. Recognizing this fact a parliament, whose membership was territorial, was employed by the king to obtain the consent of the locally organized opposition to the imposition of taxation. And in assigning or agreeing to representatives, he selected heads of the most important local subdivisions for these very obvious reasons. They were in control of the resources that the king sought to reach, and of people whose ill-will he could not afford to incur.

Significance of Geographic Subdivisions Lost

At that time and for centuries the territorial subdivisions, such as counties and boroughs, were fairly uniform in their interests and in their demands on the central government. Since that time economic and social interests have taken on a new alignment. Instead of self-centered communities, in whose affairs interests are common, the principle of specialization and subdivision in individual employment has operated so that constituencies based on community of interest are not territorial but functional and state-wide in their organization and association.

Only One Territorial Issue Remains

Beside this, the fairly equal distribution of the population which formerly made the representation of these local units reasonably equitable, has by a rapid process of development in the mechanical arts given way to a relatively more sparsely settled country and highly congested cities. This situation obtains in New York even to greater extent than elsewhere. There is now no such thing as even a rough equality between counties and towns, and local representation has come to mean almost nothing when considering matters of state-wide importance.

Evils of Present System of Representation

The acceptance of the purely fortuitous boundary lines of county and town has more than a negative importance. It places representatives

in the attitude of local competition and reduces the legislature as a branch of the government to the plane of a commercial exchange in which local representatives bicker for advantage. A second result has been to pit the country against the town in a contest of strength, which not infrequently defeats measures necessary to the highest welfare of the people of the state. A third result is that it causes the legislature to retain control over many local matters that could best be left to county or municipal government.

Even assuming that territory and not constituencies are of primary importance, the system has worked badly. It is true, the present constitution requires that each senate district shall contain as nearly as may be an equal number of inhabitants, excluding aliens, and the apportionment of representation in the assembly among the several counties of the state as nearly as may be according to the number of their respective inhabitants, excluding aliens. But, as is well known, the principle embodied in these provisions is grossly violated by limitations imposed by the constitution itself (such as the provision that each county except Hamilton shall have one assemblyman regardless of its population) and by the methods of apportionment employed by both political parties. The gerrymander, which is persistently used, is openly designed to defeat responsibility by securing to the dominant party which resorts to it a representation larger than that to which its vote entitles it, and the gerrymander cannot be prevented as long as the single member district is the basis of apportionment.

New Adaptations Made in Other Political Jurisdictions

In other jurisdictions and political systems where the need for a new method of defining constituencies has been recognized, the principle of proportional representation has been adopted. This has led to the abolition of the single member district and the establishment of a system of membership responsive to constituencies by giving to each reorganized constituency representation approximately according to its voting strength. For this method it is claimed that it works justice to all parties, guarantees an approximately exact reflection of all shades of public opinion in the legislature and establishes in fact, as well as in name, a legislature responsive to the will of the people. Whether by this or other methods, the end is accomplished, fulfillment of the essential purpose of a representative body in government requires that the present territorial system be abandoned.

The Bicameral Organization Originally Founded on Class Interests

Another problem involving the lack of adaptation of organization to work to be done is presented in the two-chamber assembly. The bicameral legislature was founded on the idea of constituencies. In its origin the

upper house of the legislature, both in Europe and in New York, was distinctly a class institution, designed to protect a well-defined property interest against a radical unpropertied numerical majority. The English House of Lords represented the landed interests of England. So the first senate of New York, under the constitution of 1777, represented the landed proprietors, as none but freeholders could sit in that body or vote for members of that body Likewise, in some other states distinction was first made between the upper and lower houses on the basis of property or taxation, and it was everywhere contended by the defenders of the system that if both houses were elected by voters possessing the same qualifications, all grounds for the existence of the second chamber would disappear. Although, in the early years of the republic, legislatures and conventions of delegates yielded to the increasing demands for an electorate in which no class distinctions would obtain and swept them away, the bicameral system was nevertheless retained.

It is a significant fact that about the time the check of a distinct electorate for the senate was removed, the practice of protecting the rights of minorities against popular will by means of judicial control developed with extraordinary rapidity. To the judicial control, exercised over legislation by the state courts, was added the control of the federal courts, particularly after the enactment of the fourteenth amendment to the Constitution of the United States which, by prohibiting states to deprive any person of life, liberty or property without due process of law, established positive standards for the protection of individual rights against state legislatures throughout the whole American empire.

While these changes affecting the position of the state legislatures were taking place, a third development was exercising a profound influence on the working of the bicameral principle, namely, the growth of strong party organizations capable of controlling, when in power, both houses of the legislature and rendering the idea of the houses checking each other practically obsolete. A thorough study of the operations of the New York legislature recently made by a capable observer shows pretty conclusively the failure of the check and balance principle in actual practice when the same party controls both houses.* The useless and irritating friction which occurs when the two houses are in the possession of opposing parties needs no description here.

In considering whether the provision for a bicameral body shall be retained in the new constitution these facts should therefore be taken into account:

1. The original justification and reason for two houses, namely the representation of the landed interest in the senate have disappeared with the establishment of identical suffrage for voters for both houses.

* Colvin, The New York Legislature: A Study in the Bicameral Principle.

2. Adequate control for the protection of private rights exists in the Fourteenth Amendment to the federal Constitution.
3. Party organization destroys the check and balance principle now employed in defence of the theory.
4. When the two houses are possessed by opposing parties wastefulness, friction and political folly usually ensue.

The change to the single chamber system has been effected, after long experiments with the other, in the legislatures of most of the leading cities of the country, some of which have larger budgets than that of the state of New York. Aside from the fact that the reason for the original institution of two houses has disappeared, it has been found as a matter of experience that it adds enormously to the cost of government; it divides responsibility; and it gives opportunity for thwarting the public will through maneuvering for delays and deadlocks that could not obtain with one house. It is, therefore, a matter for serious consideration whether these evils which are admitted to be connected with the system do not outweigh the accepted arguments that may be advanced in support of the bicameral principle.

Number of Members of the Legislature Not Determined by Standards of Responsiveness and Efficiency

The number of members of our state legislature has always been determined by reference to local, party and historical considerations, and not by standards of responsiveness or efficiency. As a result, we find 390 members to the lower house in New Hampshire with a population of 430,572, and 150 members in New York with a population of 9,113,614. In 1777, when New York had a population of about 300,000, the constitution made provision for 24 senators; in 1821 the number was increased to 32; and in 1894 it was fixed at 50, with an arrangement for adding one more senator upon certain contingencies. The number of members of the assembly was fixed at 70 in the first constitution, at 128 in 1821 and 1846, and at 150 in 1894. If we apply standards of responsiveness and efficiency to the determination of the number of members in a legislative assembly it is necessary to take in account: (1) the means of reaching and keeping in touch with constituents, (2) the number needed for doing the committee and other work of a reviewing and approving body, and (3) time limits upon debate in the transaction of business.

The Relation of Members to Constituencies

With reference to the former it is clear that with the modern press and means of travel and communication a representative to-day can keep in closer touch with 100,000 constituents than his predecessor a century ago could, with one-tenth the number. But this is not all that is required. Citizens should have some means for coming into personal contact with

members of the policy determining branch of the government, so that from this viewpoint a large membership in a state having a large population is preferable to a small membership.

The Relation of Members to Committee Work and Debate

The membership of the legislative body should also bear some relation to the increasing number of activities of the government and provide opportunities for constituencies to be represented in the principal committees. This suggests increasing rather than decreasing membership. With reference to the problem of securing ample debate, however, it may be noted that the United States senate, a body of 96 members, has been able to maintain substantial unlimited discussion (whereas in the House of Representatives it is closely restricted), and it has also proved to be a remarkably efficient body in the technique of law-making, at least as compared with the lower house.

Assuming that the present organization and procedure are to be retained, the mere fact of numbers is of great importance. While mathematical tests cannot be imposed, it is safe to say that even though a single chamber were established, one hundred members would constitute a large enough working body for the expeditious transaction of business. But it is further to be noted, that with a system which provides for responsible leadership, and in which the legislature is used to enforce responsiveness and responsibility, a much larger membership has not proved incompatible with efficiency, in fact, it has often proved to be of advantage in representing constituencies and in committee work, at the same time maintaining a high order of debate.

Legislature Not Complementary to Other Working Parts

As has been said, there is nothing which will justify a misfit, and one branch of the government is a misfit if it is inconsistent with the purpose of its own existence and is not harmonious in its action with other parts. By this test both the organization and procedure of the legislature are defective. They are defective:

1. In the rules governing its action while in session.
2. In the organization of its standing and special committees.
3. In its staff agencies.

Rules Governing Legislature in Session Out of Harmony With Purpose

The organization of the legislature in session is a simple matter which conforms to that of other large representative bodies, consisting of a presiding officer, clerk, sergeant-at-arms, pages, etc. The difference lies in the procedure governing the debate and the taking of votes. Already these defects have been described. What has been said may be summarized in a paragraph.

Rules Governing Not Adapted to Enforcing Responsibility

In the development of rules controlling representative bodies one or the other of two principles has dominated: Either they have been framed for the purpose of locating and enforcing responsiveness and responsibility upon high executive officers—the persons who must transact the details of business; or they have been framed for the purpose of gaining direct control over executive subordinates, thereby assuming responsibility as a body both for legislative or administrative acts. With all the variations in details of organization and procedure, the one conspicuous result of adopting the first principle has been to emphasize inquiry and debate on the floor, while the one conspicuous result of adopting the second principle has been to emphasize the committee, and to prevent real debate. Under the first plan those who must execute are made responsible for the drafting of administrative bills and preparing briefs in support of executive measures, making these executive proposals the subject of open-house inquiry and debate, the floor being made the opportunity for the "opposition." Pursuant to the second plan, the executive is not permitted to formulate, introduce or defend administrative or any other measures, and the whole procedure becomes one that cannot be followed or understood by either the membership or constituencies.

The first plan is adapted to making government responsible—the purpose of the representative system.

The second plan is adapted only to irresponsible government, as it does not provide for leadership, limits advocacy and defense largely to chairmen of legislative committees, whose ways are secret, deprives the "opposition" of all opportunity to question the administration on the floor, applies "gag" rule to debate to force measures of an irresponsible "organization" through each house, and in case of difference, through joint conference committees, whose reports are accepted under the whip, and sends to the executive measures without giving him any public opportunity to participate, except by acceptance or rejection. This is the type of regulation of legislative procedure employed in the state of New York. Nor is the present unsatisfactory character of the rules and of results due to any lack of constitutional verbiage in the organic law itself. Its evils have only grown larger in the efforts of the people to prevent "log rolling," "pork barrel" legislation, and "dark chamber" proceedings by mere restrictions on procedure. The defect is one of fundamental design that cannot be cured by patchwork or safety devices to prevent disaster.

Legislature in Conflict with Authority and Jurisdiction of the Executive

The results of the ill adaptation of the legislative machinery for locating and enforcing responsibility that have already been commented on constitute only one side of the picture. A most serious consequence

of the irresponsible use of legislative power, under conditions where inadequate provision is made in the organization of the legislature for direct dealing of the executive, has been the invasion of the field of administration, through the activities of legislative committees which are given in fact (whatever the theory) the power to recommend, and refuse to report requests for, appropriations, to create, modify and destroy the administrative machinery, to determine who shall be employed, what salaries may be paid, what supplies and equipment may be obtained, what are the conditions surrounding the service—without any opportunity being given to the executive to state publicly and defend openly in the legislature his reasons for dissent based on real administrative experience. When these powers are exercised on the one hand on recommendations of committees and little or no power is given to the governor to appoint, remove, direct, discipline or control administrative officers and agents, the uniform result has been that all of the functions and processes of administration sooner or later come under the domination of committees, whose membership in turn has no responsibility for results and no accounting to render to the people of the state at large, but on the contrary is interested first of all in local favors or in appropriations, contracts or apportionment laws which affect political or the partisan organizations.

Standing Committees Not Adapted to the Proper Consideration of Measures Either of Legislation or Administration

In the standing and special committees there is the same lack of co-ordination with the work of the government as is found in the administrative departments and offices. In connection with this subject the following points should be noticed: (1) The committees of the senate and assembly do not correspond in several respects, although the legislative functions of the two houses are identical. In 1915, the former body had twenty-five standing committees and the latter had thirty-one. Not only is there a lack of correspondence in the committees, but there is a want of co-operation between the committees of the two houses—a need which in some states has led to the creation of joint standing committees, as in Massachusetts. (2) In several instances there is a lack of centralization of work. For example, the senate has one committee on finance and another on taxation and retrenchment in spite of the obvious intimate relation of the two functions. The assembly distributes financial matters among three committees: ways and means, excise, and taxation and retrenchment. In the lower house transportation is divided among committees on canals, railroads, and commerce and navigation. (3) The committees of the two bodies do not correspond precisely with the chief branches of administration which are charged with the execution of the respective laws and whose finances should be adequately scrutinized by the committees.

The first two maladjustments, namely, absence of correlation between the respective committees of the two houses and lack of centralization of related work in the hands of single committees, are due largely to historical and political causes. Committeee have grown up irregularly with the needs of the state. When a new and important function is undertaken, there is great pressure to establish a new committee rather than to relate the work to that of an appropriate committee already in existence. Each new committee affords new opportunities to make assignments to importunate members who are often more anxious for self-importance than for work. Each new committee also brings in its train clerkships and other perquisites which are regularly employed to reward party service. Thus no permanent staff of informed experts is ever found attached to ordinary committee service. The results of frequently entrusting important functions to a body of inexperienced legislators assigned to a committee and aided by a staff of servants recruited from local party workers are so patent as to need no commentary here.

The second maladjustment, the lack of co-ordination of the legislative committees to the great branches of state administration is to be attributed to two causes. In the first place the administrative organization of the state has been so broken into minor and disjointed subdivisions that an adjustment of committees to them has been impossible. In the second place, the idea that the legislature should be a genuine scrutinizing agency over the several branches of administration instead of a seeker after patronage in them is so recent as to have received little or no attention from those concerned with legislative organization and procedure.

Legislative Staff Agencies

Although legislation is an exceedingly complicated and technical function, being related on the one hand to complex human relations and to previous acts and judicial decisions on the other, it is only recently that state legislatures have begun to build up a permanent expert service. At the present time the legislature of New York has at its command the following staff agencies:

1. A legislative bill drafting commission composed of two commissioners and charged with the duty of aiding in drafting legislation, giving advice as to constitutionality and other legal questions, making researches as to proposed legislation, and advising on matters of consolidation of the laws.
2. A commissioner charged with the duty of indexing the laws and statutes of the state.
3. A temporary board of statutory consolidation composed of five members charged with the duty of reporting to the

legislature a practice act, rules of court, and short forms—the consolidation and simplification of the civil practice of the courts of the state.

4. A board of estimate composed of the governor, lieutenant-governor, president pro tempore of the senate, the chairman of the finance committee of the senate, the speaker of the assembly, the comptroller, the attorney general and the commissioner of efficiency and economy (now abolished) and authorized to prepare and transmit to the legislature an estimate for a budget for the amount required to be appropriated by the legislature for the conduct of public business for the ensuing fiscal year.
5. A commission for the promotion of uniform legislation in the United States to consider and recommend uniform laws on certain specified subjects.
6. A number of special commissions from time to time to report on matters for legislative action.

It is evident from a survey of these agencies that some of them could be consolidated in the interest of efficiency and economy and at least one of them, the board of estimate, is not adapted to the purpose for which it was created.* There is certainly no reason why the promotion of uniform legislation and the indexing of the statutes should be separated from the general work of the bill drafting commission. In giving proper technical advice, that commission must be entirely familiar with existing law and in a position to index it with more precision than an independent officer. The promotion of uniform legislation is not so remote from bill drafting and legislative research that it requires separate organization and office equipment. The constant resort to special commissions on legislative subjects suggests that the staff agencies for supplying information to the legislature must be inadequately equipped for the performance of the duties vested in them by law.

Local Legislation

The working power of the best organization in the world can be utterly destroyed by overloading it with details and by constantly injecting extraneous issues concerning which the members cannot possibly be informed. What may be said, therefore, of our state legislatures which are now overburdened with a mass of legislation relative to the affairs of counties, towns, villages, and cities, about which the members in general are almost wholly ignorant and the members from the localities involved only partially informed? It is a well-known fact that each legis-

*For a discussion of the board of estimate see the Proceedings of the New York Academy of Political Science for October, 1914, pp. 141-192.

lator is constantly harassed by the demands of his constituents for local legislation, that the pressure to obtain this legislation compels him to sacrifice larger affairs of the state to local necessity, that the time of the legislature is withdrawn from the consideration of great questions to the transaction of petty business and that the finances of the state and of localities are disorganized and wasted by special legislation.

The present constitution recognizes the evils connected with this system and touches upon it slightly (Art. III, secs. 16, 20, 26, 27; Art. VIII, sec. 10; Art. XII, sec. 2), but it does not go to the root of the difficulty, namely, by conferring home rule upon counties and cities in such a form to relieve the local communities of the necessity of constant application to the legislature for powers.

Of course, it is obvious that by conferring general powers of local legislation upon cities and counties, the problem of the state and the community is not solved. Questions as to what powers are actually conferred upon the communities will constantly arise, and the will of the state must be superior to that of the local body. The limitations on the legislature are in this regard subject to judicial interpretation and by granting home rule to localities the control of the courts may be substituted for control by the legislatures.

There is, however, another method of exercising the control of the state over local legislation. Local legislation under general grants of power may be subject to administrative supervision in the first instance, with appeal to the courts as the last resort. In Michigan, where general powers are conferred upon counties, important local legislation under this grant is subject to the approval of the governor. In California, it is submitted to the legislature for approval or rejection. In England, the most satisfactory solution of the problem seems to have been made.*

If the vast mass of local and special bills which now clog the legislative machine, divert attention from matters of large significance, and degrade members to the level of negotiators for petty local favors, could be disposed of in such a manner as to secure state-wide control, and at the

*In England the power to authorize local bodies to perform many functions and undertake various enterprises is vested by law in several appropriate central administrative officers, subject to the approval of Parliament. When a local body seeks a new power or authorization it applies to the appropriate department. On receiving an application the department makes inquiry into the advisability of granting the request, holds hearings, and gives all interested parties a chance to be heard. All orders granted are arranged in proper groups and submitted to Parliament for its approval. If there is no objection to any of the orders the entire group goes through unopposed. If there is objection, then a hearing is granted and the measure is treated like any other ordinary bill. In practice, however, this relieves parliament of a large mass of petty legislation and centralizes the initial responsibility in the hands of expert administrative officers. See in Lowell, *The Government of England*, Vol. I., Chap. xx.

same time relieve the legislature, the gain for efficiency and real responsibility would undoubtedly be enormous. Any reduction in the amount of "log-rolling" is a step in the direction of better government, and the substitution of administrative for legislative control over matters of local concern is full of promise.

CHAPTER VII.

CONSTITUTIONAL PROVISIONS DEFINING THE RELATIONS OF LEGISLATURE AND EXECUTIVE

In other relations it has been said that one of the prime reasons for the representative system is to make officers charged with carrying on or administering affairs of state responsible to the people for their acts; and that this, when analyzed, means: responsibility for leadership, responsibility for the fidelity and fitness of subordinates, and responsibility for efficiency in management—for the use of men and money as measured by results. It has also been said that the function of the legislature is to serve as a regularly organized constitutional means for enforcing executive responsibility. This suggests consideration of the provisions in the constitution of the state defining the regulations of the legislature and the executive.

Responsibility for Use of Executive Power Implies Leadership

Responsibility for the use of executive power inevitably implies leadership. Executive power and leadership cannot be separated. In both public and private business, those who are charged with high duties and who are made responsible for their proper discharge must be leaders or failures. On the contrary, irresponsible official leadership means autocracy. Irresponsible, unofficial leadership means domination by political "boss."

Need for Executive Leadership Understood at Time of First Constitution

At the time the first constitution was adopted there was a very definite comprehension of the need for executive leadership, though, as before pointed out, the technique of making official leader responsible had not been developed as a matter of public law (above pp. 54-58). It was also understood that autocracy must be prevented at any cost. The well-established constitutional principle was therefore adopted that the administrative officer must wait on legislative authority before he could raise or spend money, before he could proceed with any undertaking. As has been shown, this principle is not inconsistent with executive leadership. But does not in itself provide for executive leadership. So far as the executive is concerned it is purely negative in its importance. It is positive only in the opportunity it gives for the enlargement of legislative power when executive leadership is not provided for.

The conclusion that the need for executive leadership was understood when the government was first established, appears from the provision of the organic law of the state, which declares that "the executive power shall be vested in a governor," but, paradoxical as it may sound, the first

constitution and every subsequent constitution has failed to vest in the governor the executive power which it has declared to be his. As Governor Hughes remarked in his inaugural address of 1909, "There is a domain of executive or administrative action over which he has no control, or slight control." In other words, the means of exercising the executive power are not given to the governor. To continue the analysis made by Governor Hughes: "There are several elected state officers not accountable to the governor, who exercise within their prescribed spheres most important executive powers * * *. The multiplication of executive duties incident to the vast and necessary increase in state activities has resulted in the creation of a large number of departments exercising administrative powers of first consequence to the people. The governor has the power of appointment, but in most cases the concurrence of the senate is necessary. The terms of officers are generally longer than the governor's term. And in their creation the legislature, with few exceptions, has reserved the final administrative control to the senate in making the heads of departments, to whose appointment the senate's consent is necessary, removable only by it." Thus the fundamental fact stands forth that the means of exercising the executive power are largely withheld from the governor in whom the power is constitutionally vested.

Two Important Ways in Which Governor is Recognized as Leader

Nevertheless, in two important ways the governor is recognized as a responsible leader:

His Duty to Recommend Measures

All of the constitutions of this state have made it the duty of the governor to inform the legislature of the condition of the state and to recommend such matters as he shall deem worthy of consideration by that body. In the first organic law, he was instructed to recommend such matters "as appear to him to concern its [the state's] good government, welfare and prosperity." Under the present constitution he is to recommend whatever he shall "judge expedient." Obviously the duty of studying public policies and administrative methods is thus clearly laid upon the governor, with a view to his formulating positive recommendations to the legislature. By this very act the governor assumes before the public a marked responsibility, which is not discharged by a mere perfunctory address to the representative body.

His Power to Call Representatives Together in Extra Session

Further evidence of recognition of the need for executive leadership is found in provisions that give to the governor the power to call an extraordinary session of the legislature and to limit the work of such a

session to only those subjects which he may recommend for consideration. The exercise of this power by executives of great distinction and the general approval that has followed such exercise, in most cases, are evidence of popular appreciation and understanding of its significance.

Lacking in Means for Making Leadership Effective

What is lacking is the means for making leadership effective. When the principle which is recognized in private affairs as essential to leadership (viz., responsibility and effective collective action) is applied to the business of government it is evident that the one power essential to effective leadership is withheld or not made mandatory. It is not made the duty of the executive to appear personally before the legislature with projects or measures that are regarded by him to be needful. He is not required to formulate measures nor to have them formulated and presented by a responsible body of executive advisers or cabinet. Neither the governor nor anyone responsible to him is required to appear on the floor of the legislature to submit and defend his proposals against all "opposition" or to modify them in such a manner that, if he is not supported, he may feel warranted in going before the people on the issue raised. This has long been the common practice in all business corporations, but it has not been fully developed as a means of making government responsible.

Right to Introduce and Defend Measures Necessary to Effective Leadership

Since the establishment of the first state constitution, however, the above principle has been firmly fixed abroad. Recognizing such a requirement of the executive as essential to leadership, as well as essential to the location and enforcement of responsibility, the King's "speech from the throne" in England is written by the cabinet and embodies the recommendations of the executive branch of the government. The French constitution provides that the executive may call extraordinary sessions and communicate by message, as in this country, and also gives to the executive power to introduce bills concurrently with the members of the legislature; and finally adds that "the ministers have entrance to both chambers and must be heard" (Article 6 of the Act of July 16, 1875). The admission of the executive to the floor of the legislature has also found widespread approval in the United States. The principle has received the endorsement of more than one president and it was approved by a committee of the federal senate a quarter of a century ago. It has been demonstrated to be sound and effective in foreign government as well as in private business enterprises.

Argument Opposed to the Principle Not Well Founded

The only argument in opposition to the principle, which carries weight with American opinion, is based on the assumption that admission of the executive to the floor would break down the accepted theory of separation of powers. This assumption has no foundation. On the contrary, it has been shown by all the experience of representative government that in those institutions in which the executive is required to meet with the representative body and submit his proposals and defend them, the principle of separation of powers has been preserved, whereas in those institutions in which no provision has been made for this, there has been a constant invasion of the administrative field by the legislative branch of the legislative field by the executive, or both.

Executive Leadership Essential to Preservation of Separation of Powers

The power to propose, explain, and defend, does not convey any power to enact; the power to question and criticize an executive officer is not an executive power, but a legitimate legislative function. The practice of admitting the executive officers to the legislature, only emphasizes the separation of powers and makes them really effecti e. It makes unnecessary those subterranean relations between the two branches which inevitably spring up when official lines of communication are forbidden. Under such a system the executive can really and effectively criticize the legislature and the legislature can force the executive to give an account of his conduct in office every day in the year. Without such administrative measures the constitutional inhibitions to prevent autocracy (the provisions requiring the executive to get authority from the legislature before he can proceed) gives to the legislature the power gradually to supplant the executive in the field of administration as it has done in this country.

Executive Leadership Essential to Safe Use of Veto Power

Certainly it must be admitted that such a system is not so much a violation of the separation of powers as is the authority to veto acts of the legislature; yet this is employed without any means of gaining for the people the benefits of requiring both the executive and the legislative to work in the open. Under present conditions the veto makes the governor responsible for legislation as well as for administration; and the denial of the right to the governor to formulate measures of administrative importance, to introduce and defend them, makes the legislature responsible for administration as well as for legislation. The result is the utmost confusion, instead of separation, of powers and responsibilities, as has been claimed.

An Alternative to Invisible Government

By adding to the power to propose measures and veto enactments, the right of introducing bills and defending them before the legislature, responsibility for both administration and legislation is definitized and made enforceable through appeals to public opinion. In the absence of such a procedure, unwise administrative measures are proposed by persons not responsible to the state at large for results and enacted into law without receiving the scrutiny of any officers charged with their enforcement. The only consideration that can now be given to such measures is in committee. Those which are enacted into law are usually enacted as the result of arrangements among members who are not openly responsible to the legislature, to say nothing of the state at large, and who work often in conjunction with those wholly unofficial persons that make it a business to organize the votes of localities favored by the legislation in hand to build up a system of patronage through the appropriations, contracts, and independent administrative functionaries of the state.

No Provision for Leadership in Matters of Economy

No provision is made for executive leadership in obtaining authority to raise and spend money. The power of the governor is negative only. The present constitution of New York vests in the governor power to veto single items of appropriation as well as whole bills. Article IV, section 9, provides that "if any bill presented to the governor contain several items of appropriation of money, he may object to one or more of such items while approving of the other portion of the bill." If the legislature is in session it may enact such items into law only by a two-thirds vote. In actual practice, however, it generally happens that the legislature adjourns leaving a large number of unsigned appropriation measures in the hands of the governor.

Executive Veto to Items in Money Measures Only a Palliative

Under such circumstances the governor is held responsible for the acceptance or reduction of items as passed in measures for which he is not responsible. The power operates as a check on an irresponsible legislature. It does not cure irresponsibility; it does not supply leadership; it does put into the hands of the governor the power to punish political enemies by using the pruning knife where he will, in the plea of economy. The power is not constructive, but may be made highly destructive. It transfers from the legislative committee room to the executive chamber all the pressure that has been brought to bear in furtherance of the plans of an irresponsible "boss." It simply invites another dark room proceeding, instead of having the business of the state done in the open, in the face of the "opposition."

Uncertainty of Operation of Negative Power

If the legislature is in session at the time the governor vetoes an appropriation measure, he is required to transmit a copy of his reasons for refusing to sign the same to the house in which it originated, and the said house is instructed to reconsider the items objected to separately. Under these circumstances the governor may, if he chooses, get a fair statement of a consistent fiscal policy before the legislature for discussion and action. But usually the legislature has adjourned before the governor has an opportunity to act many appropriations. He may also spread before the legislature in his messages a survey of the state's finances and recommendations for expenditures and retrenchments, but such a survey and such recommendations are merely pious wishes, so far as compelling even the attention of the legislature is concerned.

Positive Requirements under Present System Ineffective

A number of states impose upon the governor the constitutional obligation to present to the legislature estimates of the amount of money to be raised by taxation, but such a provision alone does not go very far in establishing executive responsibility for appropriation bills. The Efficiency and Economy Committee of Illinois, where such a constitutional provision exists, remarks in its recent report that as far as it is aware no governor has complied with this important mandate. It adds, in justice to the governors, that failure in this respect may be attributed in the main to the fact that the executive authorities of the state as now organized have not afforded the governor the facilities for securing the requisite information. In no state does the governor seem to have used his constitutional powers to the fullest extent in the direction of complete budget making, but doubtless for the additional reason that the incentive to do so is slight in view of the impossibility of really securing legislative action under proper scrutiny and in the light of effective public discussion. All the expedients have proved ineffective due to lack of provision for responsible executive leadership in matters that are of fundamental importance to the administration.

Constitutional Requirement of Executive to Frame, Submit and Defend Money Bills

The mere fact that there is an increasing number of states which are giving the governor the power to veto items in appropriation bills is indicative of a condition demanding change. Inasmuch as the finances in our states require more systematic attention and centralized and responsible control, sound public policy requires that effective measures be adopted for giving the governor a power over the budget which is commensurate with the present responsibility vested in him as the chief "executive power" by popular opinion. Nothing short of a thoroughgoing

treatment of the subject which will impose on the governor the duty of formulating, submitting and defending money measures will solve the problem of securing economy and responsibility in the appropriation and management of public funds.*

Constitution Lacking in Means for Enforcing Executive Responsibility

Not only is the constitution lacking in the essentials for developing leadership, but it is also wholly lacking in provisions for enforcing responsibility. In the discussion of the "electorate" and "the organization and procedure of the legislature," it was pointed out that no means has been provided for defining and submitting issues to the voters. (Above, pp. 21-24.)

No Provision for Making the "Opposition" Effective

As has been shown, the organized official agency of the state for formulating and discussing issues and matters of public policy and administration and proposals is the legislature—an independent elected body representing constituencies. It has also been shown that responsible leadership is necessary to the definition of issues as well as the location of official responsibility. The big principle that has been missed in our constitution making and in establishing the procedures governing the legislative body has been the necessity for making the "opposition" effective, and bringing political criticism to some positive test before the electorate.

The Provision for the Prompt Retirement of Officers Who Are Not Supported by a Majority

The principles of responsiveness and responsibility in a representative government both call for a means whereby officers who do not have the support of an undoubted and united majority shall retire. This is true of both public and private management. The methods for making the "opposition" effective are: (1) to put it in a position to prevent executive action that does not have the approval of a majority of representatives, and to prevent legislative action by a majority of representatives that does not have the approval of the executive; (2) to provide for a prompt reference to the electorate in case these two independent branches of the service cannot come to an agreement.

The Power of Executive Dissolution

As in the case of the constitutional provisions for executive leadership we have gone part way and stopped. We have provided for the

*See *Proceedings of the New York Academy of Political Science* for October, 1914, pp. 141-148, for a more adequate discussion of the subject and for definite constructive proposals.

negative but not for the positive action. An effective way of enforcing both responsiveness and responsibility is to give to the executive power to dissolve the legislative body and at the same time make the executive conform in his action to the decision of the electorate on the issues presented. Not having provided the machinery that is known to operate effectively in both public and private institutions controlled by representative bodies, the makers of American constitutions have again resorted to new and untried expedients—temporized mechanism and various roundabout and laborious procedures for securing responsibility to the electorate.

Historic Reasons for Failure to Adopt Constitutional Plan That Provides for Responsive and Responsible Government

Aside from the fact that the mechanics of responsible government under a representative system had not been developed at the time our political independence was won, the circumstances surrounding the establishment of the republic were unfavorable to a government in which provision was made for enforcing responsiveness and responsibility (see above, pp. 55-58). There had been years of ineffetive protest against what was regarded as the unwarranted use of executive power. Following this came the Revolution—a phase of opposition to the reactionary monarch, which in this country brought about national independence, but which in England finally resulted in the establishment of a procedure for establishing and controlling responsible leadership. Without experience to guide them, as a safeguard against usurpation, the American mind became attached to another principle of control, viz.: to render persons in office harmless by limiting their powers through innumerable checks which hamper positive action but do not prevent neglect, wastefulness and malfeasance.

Provision Made to Prevent a Misuse of the Powers of Government

No way having been found to make governing agents responsible to the people for the manner in which their powers were exercised, the initial plan of employing constitutional inhibitions and one branch of the government to prevent abuse of power by another was developed to such a degree of complication that it has at last broken down by its own weight and has forced upon public attention the need of change. Nowhere in the world is there such a chaos of conflicting powers, agencies, authorities, officers and jurisdictions.

Use of the Governor as a Negative Force Against the Legislature

At the very beginning of the history of New York as a state fear was expressed lest "laws inconsistent with the spirit of the constitution or

with the public good may be hastily and inadvisedly passed." In 1777, therefore, it was ordained "that the governor for the time being, the chancellor and the judges of the supreme court, or any two of them, together with the governor, shall be and hereby are constituted a council to revise all bills about to be passed into laws by the legislature * * * and that all bills which have passed the senate and the assembly shall, before they become laws, be presented to said council for their revisal and consideration; and if upon such revision and consideration, it should appear improper to the said council or a majority of them, that the said bill shall become a law of this state, that they shall return the same, together with their objections thereto in writing, to the senate or house of assembly (in whichsoever it shall have originated), who shall enter the objections sent down by the council at large in their minutes, and proceed to reconsider the said bill." If any bill so returned by the council of revision was repassed by a majority of two-thirds in both houses, it became a law. With a view to preventing unwise legislation the governor was also given the power to prorogue the legislature for a period of not more than sixty days.

These methods of executive control over legislation were abandoned in the constitution of 1821 which swept away the council of revision and vested the straight veto power in the governor. Since that date the chief executive has enjoyed the veto power alone and all of the states of the union except North Carolina have now adopted the principle.

The Use of the Courts as a Negative Force

Between the years 1777 and 1821, however, a radical change had taken place in the growth of the doctrine of judicial control over legislation. A number of state statutes had been declared invalid on constitutional grounds in several of the states before the end of the eighteenth century, and in 1803, Chief Justice Marshall laid down the doctrine in unmistakable language in the case of Marbury *vs.* Madison, which at once became a precedent for all other courts. As early as 1811 judicial control over legislation was used in New York, in the case of Dash *vs.* Van Kleech (7 Johns. 477), and five years later Kent blocked the enforcement of an act of the legislature on the ground of its invalidity. From that time forward, the principle that it was the duty of the courts to act as a check on the legislature was applied with increasing frequency.

Almost correlative with this growth of judicial power was the multiplication of specific constitutional limitations on the legislature. In the beginning, almost sovereign power was entrusted to that branch of the government, but by steady process its authority over finances, the affairs of cities, special legislation, and even its own procedure has been cut away until it has lost a large share of its former high prerogatives.

Our System of Checks and Balances

To this system of pitting the governor and the courts against the legislature are added innumerable other devices for breaking and distributing authority and responsibility until no one knows who is responsible for anything, except the unofficial boss, whose tenure usually outlasts that of all the official agents. Among these devices may be mentioned the following:

1. A large variety of methods of appointing administrative officers so that no single agency can claim complete authority.
2. Diversity in the terms of officers, applied also to the legislature where senators hold for two years and assemblymen for one year.
3. Diversity in the methods of removal, various agencies being employed singly or in conjunction with one another.
4. Overlapping terms in the same commission or board, so that no new policies can be speedily adopted.
5. Popular election of some executive officers and appointment of others equally important.
6. The necessity of constant resort to the courts to determine the limitations of officers in purely administrative matters.
7. Distribution of kindred functions among many authorities in order to prevent centralization.

Development of the Irresponsible Boss.

Operating under the system of checks and balances—on the doctrine of "original sin" in politics, that no one can be safely entrusted with any substantial authority—the legislature, through its control over the finances and over the structure and powers of offices and officers, developed an administrative system in which no leadership was contemplated. The result was that a non-official, outside, irresponsible, partisan organization came to have a dominant influence in determining what should be done, and the affairs of state were shaped through what came to be known as the American system of "log-rolling" legislation and "pork barrel" politics. This irresponsible leadership has been the most conspicuous factor in the American governmental system for the last 140 years—a system which depends on satisfying the demands of small independent geographical constituencies through representatives whose controlling motives have been to commend themselves to the voters of their locality by furthering schemes for local development and by employing methods styled "invisible government" under the leadership of an irresponsible "boss."

Reaction Against Irresponsibility

During the first century after the Revolutionary War, while each

local constituency represented was striving for capital and population with which to develop natural resources and there was little else than local economic interests to serve, this system, in its various phases called the "spoils system," was ardently supported or complacently endured. Later, when (through the development of transportation and the broadening demands for commerce) the constituencies that looked to the government came to comprehend the whole state or the whole nation, and the people themselves found that they must of necessity rely more largely on public institutions for protection and for the promotion of conditions favorable to their comfort and happiness, the methods that grew up as a necessary part of an irresponsible management were resented.

The Adoption of Palliatives to Little Purpose

There can be no doubt as to the widespread dissatisfaction with prevailing political methods. There can be no doubt as to the presence of conditions described. The defects in our system have been so vital as to cause some to question the desirability of retaining the representative system. There have been many advocates of direct control through the electorate. In the popular mind the failures of representative government under our present conditions of operation have been often attributed to the system itself rather than to our own failure to provide the essentials to its successful operation. Here, as in other cases, the reaction of popular dissatisfaction has caused the introduction of new devices, the patching up of an old defective mechanism rather than the remodelling of it in such manner as to adapt it to the work to be done. Out of this dissatisfaction has sprung a large number of constitutional and legislative devices, among which are—

1. The direct primary which it was thought would destroy "the boss" and make all party nominees immediately responsible and responsive to the party electorate.
2. The initiative and referendum whereby the actual legal measures embodying the issues of politics can be submitted directly to the voters for their judgment.
3. The recall through which officers not responsive to popular will may be ousted from their places of power.

To attribute the wide extension of these political devices to a temporary wave of radicalism or to a determination to overthrow representative government would be a fundamental error. The most radical and revolutionary parties of Europe have never spent any time or effort in working for such institutional methods. Their wide extension has been due to a sincere quest for a responsible and responsive system of government. As a result, no doubt, it has been possible to get issues before the people and to introduce a certain amount of responsiveness and responsibility, where before it was lacking, but this has been done at an enormous cost, after long delays, and by employment of very complex and labored processes, whereas, by following well-known, well-tried constitutional expedients, very simple and effective methods could be employed to insure responsibility for leadership, for honesty, for efficiency and economy.

What the people have failed to realize is that the cause of their distress has been fundamental, not incidental in character; that they are confronted by a condition that requires radical operation instead of palliatives—a constitutional adjustment which will bring into our political system the well-known and well-tried mechanism that makes for responsible government and renders impossible irresponsible leadership.

New York Practice a Perversion of the Principle of Representative Government

It is a fact which should not escape attention that the conditions under which governments have been unresponsive to public opinion and irresponsible, dishonest, inefficient, and wasteful have been those in which no provisions have been made for the development of executive leadership and the enforcement of executive responsibility, and that among the most conspicuous examples has been the government of the state of New York—under constitutional provisions in which, in common with our other American states, the principles of direct election of the executive and short tenures have been relied on in lieu of acknowledged and accepted leadership held to true responsibility. What we have failed to see is that there can be no such thing as an intelligent government without leadership, whether this may have to do with public or private affairs.

Nor must we rely alone on the experience of political bodies for this conclusion. Miscarriages in private corporate management have been largely due to the same cause—failure of members to provide themselves with the constitutional means for utilizing official agencies for developing support for responsible leadership on the one hand and an effective opposition to bad management on the other—for locating responsibility, defining issues, and having these directly related to official acts—in short, a mechanism adapted to making the management of affairs responsible. Experience has demonstrated that an institution in which there is no leadership is managed worse than the one in which leadership is developed, even though the leader be an "irresponsible boss." With all of the outcry against the boss, the common sense of the community will support him until some constitutional provision is made for official leadership, and responsible leadership must, of necessity, be located in the executive.

CHAPTER VIII

THE INDEPENDENT AUDITOR

Defects of the Constitution and Statute Law Providing for Current Review and Approval of Financial Transactions

One of the prime reasons for the establishment of representative government was to call the executive to account for expenditures. It is true that the protest which led to the conference between King John and the barons was in the main against "taxation without representation," but a necessary prerequisite to obtaining the consent of representatives has at all times been an executive accounting.

Audit by the Legislative Body as a Whole

In some countries the king or his immediate representatives are required to appear personally and make the statement with respect to the expenditures under past authorizations by the legislative body. "Before the executive can obtain consent to further proposals for money-raising he must do two things; he must satisfactorily explain what he did with moneys previously obtained; he must satisfactorily explain what he proposed to do with future grants." It was from this practice of *listening* to a verbal statement or account of expenditures that the term "auditing" arose.

Audit by Legislative Committee

The next step in the development of a procedure for enforcing accountability through an independent audit was the appointment of an auditing committee. Instead of all of the members of the representative body being required to attend while an accounting was made, or, to put it in another way, instead of the audit being limited to the attention that could be given by a large body, a few members were designated as a special committee to take such time and to use such means as were appropriate and needful to determine whether the public money had been spent honestly and according to legal requirements. This form of examination also proved unsatisfactory as public business became more extensive and more complex. Examination by an auditing committee of the legislative body came to be merely perfunctory, unless perchance it happened that the work of the committee was dominated by an "opposition" member or party. In this event the work of the committee might prove to be quite exhaustive, might have the effect of seriously embarrassing the executive in putting him on the defensive, but it seldom met the strict requirements of an audit.

Creation of an Independent Auditor

A third step in advance was the creation of an auditing department or office, which was made independent of the executive. This consisted

of an officer with such staff as he might find necessary, who was not in any manner responsible for authorizing contracts and payments or for disbursing public funds, but whose duty it was to review currently the business transactions, to inspect critically documents, vouchers and accounts, and to determine whether they had been legal and just. He also went occasionally into questions of revenue raising to determine whether or not the amounts charged and collected and the processes used for establishing rates of charges and collections were in accordance with the authority which had been given for raising revenue; to determine whether all of the moneys collected had been properly accounted for; and whether proper steps were being taken to collect charges that had come into arrears. The function of this office was something more than that of an auditor. That is, it had the effect, not only of giving to the state the benefit of a verification of the legality of transactions, but, being current in its operation, the review of vouchers and accounts had the effect of preventing the consummation of transactions that would lead to the subversion of public funds. The independent auditor came to be a comptroller of expenditures—a person who was in a position to prevent irregularity and losses due to discoverable neglect or attempted diversion, and which were reduced to a minimum.

Provisions of Constitutional Law in New York

No provision was made in the first constitution of the State of New York for an auditor or comptroller. The office was established by statute about the beginning of the last century, and in 1821 the office of "comptroller" was given a constitutional standing. By the constitution of that year the comptroller, as well as the treasurer and a number of other officers were made independent of the governor by a provision for their appointment as follows:

> "The senate and assembly shall each openly nominate one person for said office respectively; after which they shall meet together. If they shall agree in their nominations the person so nominated shall be appointed to the office for which he shall be nominated. If they shall agree the appointment shall be made by joint ballot of the senators and representatives of the assembly."

The constitution of 1846 provided that the comptroller "shall be chosen at a general election and shall hold office for two years," which provision has been reincorporated in the present constitution.

Defects of the Present Constitutional Provisions

Defects in the constitution pertaining to the office of comptroller are of two classes:

1. It has established the office, but has failed to prescribe the duties which are fundamental to it

2. It has failed to protect the independent character of the auditing functions.

As constructive recommendations are to be incorporated in a subsequent report the first of these defects will be left without discussion at this time. The comment in this report bears entirely on the second constitutional defect, namely, on the results of the failure to protect the office, or, to put it in another way, on the acts of the legislature which have laid upon the office duties and functions that are at variance with its constitutional purpose.

Defects in Legislation Governing the Office

The history of the comptroller's office would be an interesting chapter in a study of irresponsible government. It is sufficient for the present purpose, however, to describe the result. Being left almost entirely in the control of the legislature and in its establishment being made a creature of statute law, the office was assigned three absolutely discordant and irreconcilable duties, namely:

1. The comptroller was required to determine what revenue charges should be set up and amounts were to be collected.
2. The comptroller was also required to collect the revenues, the amount of which was to be determined by his own official acts.
3. The comptroller was required to audit and verify the collections as well as the accruals which were made in his own office.

Here we have an auditing office, established as a part of the constitutional machinery for fixing and enforcing administrative responsibility, and yet laboring under administrative duties assigned to it by statute, the effect of which is to destroy the disinterestedness of its audit and verification. The auditor as an instrument for enforcing responsibility has had turned over to him by an irresponsible representative government the very autocratic powers that the representative system was established to correct, when these powers were exercised by the executive.

The Present Organization of the Office

Lest it be thought that the conclusion above reached is unwarranted, the present organization is shown in outline below—arranged by working units and subdivisions of personnel, according to functions performed by each (previous to the law of 1915).

1. Activities having to do with determining what revenue charges shall be set up for collection.

Transfer Tax Bureau

Imposes transfer tax and penalties under the transfer tax law.

Corporation Tax Bureau

Locates taxable corporations; obtains evidence necessary to levy taxes; makes the levies; handles matters relating to reduction of capital stock, etc.

2. Activities having to do with collecting revenues.

Transfer Tax Bureau

Collects transfer taxes imposed under transfer tax law.

Corporation Tax Bureau

Collects taxes imposed on corporations; issues warrants for unpaid taxes, etc.

School Debt Tax Bureau

Collects taxes due under school debt tax law.

3. Activities which have to do with auditing financial transactions.

Finance Bureau

Has supervision over auditing of all accounts against state; supervises sinking funds, trust funds and bond sales.

Audit Bureau

Makes audits of state institutions, boards, commissions and departments; passes on contracts for maintenance of state institutions; keeps appropriation and retirement fund accounts; prepares financial and budgetary statements; prepares the comptroller's annual report, etc.

The Land Tax Bureau

Has charge of matters relating to the admission and rejection of taxes on non-resident lands; prepares deeds for land sold for taxes; examines assessment rolls; reports on matters referred by the commissioners of land office; makes computations relating to state aid, to highways, etc.

Stock Transfer Tax Bureau

Examines records of companies, transfer agents and persons engaged in the brokerage business to determine whether required tax is paid.

Mortgage Tax Bureau

Audits and supervises accounts of county treasurers in connection with moneys received from recording officers.

License Bureau

Supervises private bankers, steamship ticket agents, etc.

Bureau of Canal Affairs

Supervises financial transactions relating to canals.

Bureau of Highways

Audits accounts of highways department; examines contracts for construction, audits payment of estimate, etc.

State Printing Division

Supervises expenditures for state printing.

Organic Changes Provided for in Recent Bill

The foregoing represents the organization of the comptroller's office, as it existed at the time the descriptive report of the government of the state was prepared and as it exists today. What is known as the Hinman Act was signed only a few days since. This act took away from the comptroller certain tax-collecting agencies which had charge of corporation, transfer, franchise and mortgage taxes. It was a step in the right direction, but still the comptroller, through his *ex-officio* connections and other administrative responsibilities, is far from being an independent auditing officer.

Section 179 of the Hinman Act provides specifically that, although the powers and duties formerly conferred upon the comptroller in relation to the assessment, determination, revision, readjustment and imposition of corporation taxes shall be transferred to the new state tax department, "the duties of collecting corporation taxes assessed and the refunding of such taxes as paid" shall continue to be exercised and performed by the state comptroller. It is obvious that the bill does not take out of the comptroller's office all of its discordant functions. It does not provide for its complete independence. Although the work may be followed up on more consistent lines, the office is not protected against future invasions by legislative enactment. This office, which is so essential to the working plan for making the government responsible and for protecting the state from exploitation, can itself only be protected by constitutional enactment. It is essential that the comptroller, as the auditor-general of the State of New York, be set aside and entirely isolated so that pressure may not be brought to bear upon him to permit the office of audit to be used for ends that are inconsistent with its underlying purpose whenever such action may conserve the interests of an irresponsible "boss."

CHAPTER IX

THE GOVERNOR AND THE ADMINISTRATION

So far attention has been given to the means provided for determining the public will, and for impressing this on officers charged with the duty of performing services required. What has been said refers to the representative side of the enterprise, viz., to the "electorate," to the "representative" body, and to the relations of the representative body to the administration. Accepting Anson's distinction, which has already been twice mentioned, the report has thus far dealt with the constitutional means of deciding "What to do." It remains to evaluate the means provided for "doing it."

What is Meant by "Administration"

The word "administration" is from a Latin verb, which means *to manage, to execute.* Management has to do with the preparation, submission, approval and execution of plans. In a representative system the board is a part of management to the extent that its approval is necessary. Otherwise management is primarily an executive function.

Problems of Management

The problems of management fall into two general classes corresponding to functions or activities of similar character, viz.: (1) those which have to do with the state or other institution acting as a proprietor —activities of a kind that must be carried on no matter what it does or undertakes; (2) those functions or activities in the nature of services rendered to the public—things done in carrying out the purposes for which the institution exists. The first of these will be hereinafter referred to as *proprietary functions;* the second will be called in contradistinction *public service functions.* Each institution has similar proprietary functions and problems, but the public service functions differ as widely as there are different institutions. Each institution has its own purpose and an organization and technique developed or to be developed suited to its work.

Proprietary Functions and Problems

Among the common proprietary functions or groups of activities are these:

1. Obtaining and caring for the funds required, whether raised as revenue or by borrowing.
2. The employing and caring for the personnel needed on the enterprise.

3. Acquiring and caring for the supplies and equipment and properties required to make the personnel effective.
4. Paying the debts and current obligations of the government.

While there are adaptations within these groups of activities, they constitute only variants of methods for doing the same kind of thing and have in them common consideration for the administrator.

Public Service Functions and Problems

The public service functions differ with each institution or enterprise. Those which are carried on by the government of the state may be grouped as follows:

1. Military protection.
2. Promotion of public education, art, science and recreation.
3. Construction, operation and maintenance of public works.
4. Promotion of health and safety.
5. Regulation of public service corporations.
6. Regulation of insurance and banking.
7. Promotion of agriculture and industry.
8. Protection and promotion of the interests of labor.
9. Care and education of the dependent, defective and delinquent classes.

General Requirements of Organization for Administration

As in the case of policy determination, definite expedients and institutional adaptations have been developed for management and mastery of details of administration. The technique varies widely, but each organization when considered broadly may be characterized as belonging to one or another of the following types:

1. A type in which executive control is centralized—one which has at its head a chief executive through whom persons in charge of the several functions are held responsible.
2. A type in which executive control is decentralized—one which has many executives independent of each other.
3. A nondescript type of organization—one whose development seems to have been governed by no principle—in which some of the departmental executives may be held responsible through an officer who is called chief executive, other departmental executives may be independent and still others may hold such an ill-defined position that they are uncertain as to whom they are responsible.

Executive and Departmental Organization of the State

The organization provided for and developed under the constitution for the government of the State of New York is of the third or

nondescript type. As has been amply proved by more than a century of use, this type has nothing in common experience or human reason to commend it. In the management of affairs there are conditions under which decentralization is desirable—at least, in which the principle has worked with fair satisfaction. The circumstances which favor decentralization are those favorable to the location and enforcement of administrative responsibility for carrying on different public service functions through independent executives. Even in this event, it is found desirable to centralize certain proprietary functions. For example, the State of New York has seen fit to incorporate separately the department of education to carry on a class of functions. It has not been found desirable, however, to maintain a separate organization for obtaining funds, either by tax levies or borrowing for public school purposes. The city of Philadelphia likewise has recently set up the department of education as an independent establishment, but makes the controller and the treasurer of the city ex-officio auditor and treasurer of the school district. This is a common arrangement as between counties and cities included within them. The city of New York and the five counties (New York, Bronx, Queens, Kings and Richmond), all use the same machinery for practically all the proprietary functions. They are separately organized for administering public service functions. The state uses the machinery of the city of New York for carrying on the proprietary functions incident to the support of the public service commission for the first district, though there is neither executive nor board control over the public service function.

Principles Governing Determination as to Whether Executive Control Should Be Centralized

The principles governing determination as to whether executive control should be centralized are these:

1. Executive control should be centralized in every instance where it will make for increased efficiency and economy
2. Executive control should be centralized with respect to all functions whether proprietary or for public service when they are interdependent or decentralization will lead to confusion of responsibility, conflict of authority, and delay
3. Executive control should be decentralized wherever and to the the extent that independence of action in the very nature of things is advantageous, i. e., where there is no interdependence of working relations and no advantage can be gained through subordination to a common executive, though they may be under the same legislative control.

Application of General Principles to Functional Groups

Before concrete appraisal of the existing organization for administration may be made, these general principles must be applied to the functional groups. When so applied the following conclusions may be drawn with respect to the question as to whether central control makes for efficiency:

1. There should be central executive or administrative control over the functions of money-raising wherever and to the extent that the same revenue-paying or money-lending constituency is to be dealt with

Thus it is advantageous for the state to collect the automobile tax, whereas it is advantageous to have the local government collect the real estate tax. In each case one agency collects for all political jurisdictions, and renders an accounting. In Massachusetts, a central state bureau is maintained for administering the law governing city, county and town borrowing, since each must deal in the same market and each gains an advantage from the experience and better facilities offered by a central agency.

2. Central control over employment and improvement of the personnel of the public service should be established whenever and to whatever extent justice to a class of employees and individual efficiency may be promoted through the use of a common agency.

Whatever the arrangement for executive control over public service functions of the state—whether centralized or decentralized—it is an advantage both to the executive and the public which is served to provide a common agency for determining the fitness and qualification of persons seeking employment, for providing common labor conditions affecting promotions, transfers, discipline, health, compensation, sick leave, vacations, retirement pensions, etc.

3. The purchase and custody of supplies, equipment and properties should be centrally controlled wherever and to whatever extent better trading conditions can be established and equal or better facilities for distribution and use may be obtained

Generally speaking, trade conditions may be established better through central executive control than where purchases are left to a great number and variety of related institutions and agencies. The exception is where the using agencies are widely scattered and the market is a nearby local one (as in the case of fresh vegetables); or where the transportation cost is more than the saving through better prices obtained. Not infrequently, however, the infrequency, the emergency, the irregularity of demand are such as to put the officer in charge of work at a disadvantage if he must

rely on a central purchasing agency. The same principle holds good with custodianship. With respect to proprietors and equipment in use, only one treatment is possible—the user must also act as custodian. In each of these cases, however, it is of advantage to have central accounting and inspection control extend over the entire jurisdiction of the chief executive. When there is no chief executive, then the only central control practicable is through the independent auditor or some staff agency of the legislative body.

4. Central control over disbursements is advantageous whether operated under a centralized or decentralized system of administration

There is the same reason for central control over disbursements as there is for central custodianship of funds. There is this added advantage, that the custodian and the persons making the payment should have no interest in either the public service functions or the other proprietary functions. This does not mean that the custodian and paymaster should be independent of the executive who is held responsible for doing things. On the contrary, assuming that there is an independent auditor, he should not be independent of the executive. This is a necessary part of proprietary functions. In case of labor it is also intimately related to management of the public service. There is every reason for making the treasurer a part of a commonly-controlled central executive organization; but he should be detached in his interest and operations.

5. Whether provision is made for a responsible chief executive over proprietary and service functions, or control is to be exercised through a number of independent executives, each service group should be under a common executive head

There are some groups which bear such a close relation to each other that they may not be separated to advantage. The services organized for military protection constitute such a group. Cooperation between the different arms of the service is essential to efficiency. It is also desirable to have the military service under the same chief executive that is responsible for civil services, for the reason that lack of coordination may prove destructive to the government itself. It is only in case of military necessity that the war organization should be placed in charge of civil service functions and in any case, except under conditions of revolution and overthrow of the existing government, it is desirable to maintain a separate organization under a common executive for carrying on the proprietary functions. An extension of this principle is one of the large questions now before the English government. The same question is before the federal government, and outside of military circles there are almost no differences of opinion.

To any of the public service groups, indicated above (p. 90), the same reasoning applies. There should be coordination through group executive control of the public service activities that have for their purpose public education and the promotion of art and science; a consistent, effective, public health program depends on such group coordination, the interests of laborers which are to be served by agencies of the state should be coordinated so as to prevent conflicting and overlapping jurisdiction, and to promote efficiency through common consideration of a group of relations, each of which should be supplementary to the other. With respect to the care and education of the dependent, defective and delinquent classes, and the institutional care of the sick, decision as to whether there should be a common executive control or each should constitute a separately organized administrative group depends very largely on whether there is a responsible chief executive over all the public service functions and a correlation may be established and made effective through some kind of executive council or cabinet. There can be no doubt that there are problems common to them all; and that these should be considered before decision is reached with respect to matters of executive and legislative policy.

6. In case a system is adopted which provides for a chief executive, then the chief executive should be provided with the following executive machinery:
   - *a.* An executive officer or personnel for receiving reports, issuing orders, and handling the routine work of the chief executive.
   - *b.* An executive council or cabinet made up of specialized vice-governors or heads of functionally related administrative groups who will serve as "line" advisers.
   - *c.* "Staff" agencies so organized and related to the chief executive that he may refer any question to a detached expert or professional personnel for inquiry and report who may also be relied on for preparation or review of the budget and other proposals which are to go before the legislature.

The "Governor" or "Chief Executive"

It is a curious commentary on our respect for logic that the article of the constitution which confers the executive power upon the governor is followed by one which deprives him of a large part of it by creating a number of high executive officers elected by popular vote and almost wholly independent of him in the conduct of executive business. As Governor Hughes remarked in his second inaugural, after two years experience in the office: "While the governor represents the highest executive power in the state, there is frequently observed a popular misapprehension as to its scope. There is a wide domain over which he has no control, or slight control.

The fact is that while the constitution provides for an officer who is called the "governor," only as a matter of declaration of principle may he be said to be endowed with "executive power." The first constitution provides: "The supreme executive power and authority of this state shall be vested in a governor"; subsequent constitutions contain the declaration that "executive power shall be vested in the governor."

Yet there are several elected officers who exercise within their prescribed spheres most important executive powers. To the comptroller and the treasurer are confided powers with respect to financial matters. The attorney general is charged with duties appropriate to the enforcement of public rights through legal machinery. The state engineer and surveyor has important powers with regard to canal improvement and the only member of the canal board accountable to the governor is the superintendent of public works who has a limited authority.

Our constitution makers have certainly been guilty of gross inconsistency. Article V is a historical accumulation, not a reasoned product of administrative science. There is no consistent scheme for defining departmental limits. The powers and duties of five important officers dignified by constitutional mention, the secretary of state, comptroller, treasurer, attorney general, and engineer and surveyor, are left wholly undefined. If it be said that such powers and duties are clearly implied in the names of the officers, the obvious reply is that the legislature in distributing public business does not follow any such implications. It may be pertinently added that the duties of the superintendent of prisons, whose functions are set forth in great detail, are as positively defined by title as are those of the secretary of state. If the important functions of collecting and supervising the funds of the state are to be distributed at will by the legislature, not merely among the treasurer and the comptroller, but among as many boards and commissions as the legislature sees fit to create, then there is certainly no reason why the duties of the superintendent of public works may not be left with safety to legislative action.

Weighty as are the objections against such disparity of treatment in defining the functions of the several officers, still more weighty objections may be brought against the principle of demarcation which the constitution applies in deciding what offices are worthy of constitutional mention and what are to be left to the legislature. Dignity and magni-

tude of influence over the lives and property of citizens have not been the criteria for distinguishing constitutional from statutory officers. It will not be seriously contended that the superintendent of prisons is of more public consequence than the commissioner of health or the commissioner of labor.

It is thus apparent:

1. That the metes and bounds set by the constitution to the governor's executive power by the creation of elective officers are wholly fortuitous and in no way related to the simplest standards of business and common sense. The secretary of state whose duties are relatively unimportant in most respects is entirely independent of the governor; but the superintendent of public works is appointed and removed by him.
2. That in the definition of official duties the constitution follows no consistent principles, but leaves some of the most important offices wholly at the mercy of the legislature while narrowly circumscribing the functions of other officers.
3. That no principle has been followed in determining what offices should be treated in the constitution, the legislature being bound in some minor matters and entirely free in others of more importance.
4. That, whether considered in relation to the organization of the executive work under the governor or independent of all other considerations, the situation requires treatment according to some consistent standards.

One hundred and thirty-eight years of political experience has demonstrated the inadequacy of mere declarations to make a chief executive. The state has never had a chief executive. The only question which can be left open when considering the government historically is this: Do the people desire or need a chief executive—should there be a single elected officer who may be held to account of what is done—or do the people desire and need to try various other expedients for holding a large number of people accountable who are neither dependent or independent and concerning the result of whose action there is no way for the electorate to have an intelligent opinion. Shall the state continue to do business with a headless, spineless institution whose moving impulse comes from an external agency or organism which seeks to exploit its activities for its selfish ends, or shall the people choose as their servant a chief executive who will be held to account for using the personnel and resources of the government for the common good?

The Present Organization for Executive Direction and Control

The fact is that the constitution itself inhibits the development of a responsible chief executive. It has set up two independent heads of Proprietary Functions—the secretary of state and the treasurer; it has set up three independent heads of groups of public service functions; it has set up one independent staff agency, the attorney general. Providing no organization for a chief executive, the constitutional inhibition against the expenditure of public moneys except pursuant to appropriations has done the rest. Acting within these constitutional powers the legislature has also failed to provide either organization or funds with which the governor might build up staff agencies, except the civil service commission, and the department of efficiency and economy—the first of which is made a continuous body—as it probably should be, and the second of which was abolished on recommendation of a new governor who came into office viewing it as a creature of an opposition party. Furthermore, the legislature has established 141 different departmental officers and commissions having administration duties with no provision for coordination and with little possibility of executive direction and control. (See Chart , Exhibit , Page .)

Without "staff" or "line" advisers the governor is required to deal with or act upon the independent requests of all these administrative heads and groups as an observer from a far-off mountain top, or if he is visited by one who asks for his official sanction, he must decide or refuse without having the matter considered and discussed by the various other officers whose interests may be affected.

The Tenure of the Governor

New York, in her first constitution, drafted by the convention of 1777, granted the governor a three-year term, instead of the twelve-month term established in many of the other states. When the convention of 1821 overthrew the predominance of the landed class by sweeping away the freehold qualifications for voters for senators and reduced the term of the senators to two years, it also reduced the term of the governor to the same period. This provision was incorporated in the constitution of 1894. Meanwhile other states have moved in the direction of longer terms, all of the original thirteen, except Massachusetts, having abandoned the annual election. At the present time, of the original thirteen states, six (Connecticut, Georgia, New Hampshire, New York, Rhode Island and South Carolina) limit the term of the governor to two years; one, Massachusetts, retains the annual election; one, New Jersey, fixes the term at three years, and the remaining five have extended it to four years.

An examination of the constitutions of all the states shows that

about half of them provide for the two year term and about half or a slight majority for the four year term. A search for the factors which have determined two or four years in the several states reveals no consistent explanation. It cannot be said that those states which have been making the most radical experiment in direct democracy are uniformly attached to the shorter term. On the contrary, Oregon, Washington, California, Oklahoma, Nevada and Arizona appear among those that have adopted the four year term. Neither can it be said that all of the recent conventions have adopted the four year term in spite of the tendency in that direction, for Ohio and Michigan retain the two year period. Yet it is worthy of note that Oklahoma, Arizona and New Mexico, in making entirely new organic laws, adopted the longer period. In view of these facts, it appears that in the main the tendency is in the direction of the longer term, that some states which have tried the shorter term are abandoning it, that neither geographical or political reasons account for the choice of one or the other, that the most radical democracies do not deem the short term a necessary part of their system.

From the point of view of responsiveness, however, the term of four years has been more satisfactory. From the point of view of responsibility and efficiency, the two year term is without doubt subject to serious objections. The governor is hardly installed before he has to begin to think of the next election, the campaign for which begins within at least sixteen or eighteen months after his inauguration. By the time he has disposed of the inevitable patronage, the fight for renomination has begun. Serious and prolonged study of the problems of administration is impossible. To hold the governor to account for efficient administration under such circumstances is as unjust as it is unjustifiable, particularly when the chaos in the state administrative organization is borne in mind.

The Power of Appointment and Removal

As has been pointed out in other connections, no consistent principles have been applied in the determination of what officers should be made independent of the governor through popular election and what officers should be made subordinate to him through the exercise of the power of appointment. For instance, the state engineer and surveyor, an officer charged with duties which involve those of officers appointed by the governor, is made elective by the constitution, and an equally technical position, for which no qualifications are established, that of superintendent of public works, is made appointive. The governor's adviser on legal matters of high moment who is responsible in a large measure for the enforcement of the law, the attorney general, is elected, while the superintendent of prisons is an appointive officer.

After having decided that certain offices shall be elective, the lawmakers have not followed any consistent principles in selecting the methods of appointment, except in the case of the two important officers mentioned in the constitution, the superintendents of public works and of prisons, who are appointed by the governor by and with the advice and consent of the senate. The offices created by statute are filled by a variety of methods, so large that it has surely exhausted the inventive genius of our legislators. Whatever may have been the considerations brought to bear in determining the mode of appointment to any particular office or group of offices, it is clear that the standard of responsibility and efficiency has not been the dominant motive. At all events the debates and records available do not show that any effort has been made to discover and apply such a standard in providing modes of appointment.

When tried by canons of consistency and responsibility, the methods of removal provided by the constitution and statutes are found to be confusing beyond measure. Article V of the Constitution authorizes the removal of two officers by the governor and the suspension of a third. The superintendent of public works "may be suspended or removed from office by the governor, whenever, in his judgment, the public interest shall so require." The superintendent of prisons may be removed by the governor "for cause at any time." In the case of the removal of the former officer, the governor must file with the secretary of state a statement of the cause of such removal and shall report such removal and the cause thereof to the legislature at its next session. In the case of the removal of a superintendent of prisons, however, the governor must give the officer a copy of the charges against him and an opportunity to be heard in his own defense. It is difficult to imagine the considerations which require that a superintendent of prisons about to be removed should be heard in his own defense, while a superintendent of public works in a similar position should not be given that opportunity.

In the case of the officers made elective by the constitution, the principle of complete independence of the governor is maintained, except in one instance. The state treasurer may be suspended by the governor, but only during the recess of the legislature and until thirty days after the commencement of the next session. The governor may exercise this high power whenever it appears to him that the treasurer has "in any particular, violated his duty." If the governor suspends a treasurer under such circumstances, he may appoint some person to discharge the duties of the office during the suspension of the treasurer. It is difficult to see what standards of responsibility and efficiency place the treasurer under such partial control by the governor and left the other high elective officers entirely exempt. Surely a comptroller, or state engineer and sur-

veyor, or attorney general who violated his duties could do about as much harm to the public interest as a treasurer. Worse injuries to the state are conceivable than the loss of money or a confusion of accounts in the treasury department.

In the case of offices created by statute, there is also great variation in the methods of removal. Perhaps the principle most consistently applied is that the consent of the senate shall be necessary to the removal by the governor of appointive officers of high rank. The origin of this principle is clear: fear of concentrating too much power in the hands of the executive and the reluctance with which party organizations in the senate yield any control over patronage.

Nevertheless, the principle is not carried out in our state government with logical exactness. Certain high officers, constitutional and statutory, the superintendents of public works and of prisons and public service commissioners, for instance, are removable by the governor without the consent of the senate, but in each case different procedures and limitations prevail. The historical reasons for the absence of the requirement of senatorial approval in the case of these three officers are themselves an eloquent testimony to the principle of responsibility and efficiency. The first two officers are established by the constitution so that the consent of the party organization in the senate was not necessary, and the public service commissions were established under the recommendation of Governor Hughes, who was determined in his belief that responsibility for the work of these commissions could not be fixed unless the practice of requiring senatorial consent to removals was abandoned.

Indeed, there is ample justification for the view that the desire of party organizations to control patronage, rather than fear of the executive or interest in responsible government, has been the dominant motive in establishing senatorial authority over removals. Perhaps this is most clearly brought out in the administrative history of the federal government. The constitution of the United States, which requires the consent of the senate to the appointment of certain officers, is silent as to the process of removal, except by impeachment. Recognizing that it was not intended to employ this cumbersome procedure in the removal of minor officers, the very first congress under the constitution, after a long and informing debate, assumed that the removal power could be exercised by the president alone in the case of offices then under discussion. In spite of discussions of the subject from time to time, this legislative decision on the constitutional point remained undisturbed until 1867, when the Republican leaders in congress broke with President Johnson and determined to destroy his authority by passing the Tenure of Office Act, which required the consent of the senate for the removal of officers by the executive. The provision caused great friction, and in Grant's administration (1869) it was modified. Finally, in 1886, the law was swept away entirely, experience under the act clearly demonstrating its evil effects upon efficient administration and party responsibility.

The fear of highly centralized power and the desire of parties to control patronage have likewise been responsible for attempts to fix the terms of many high officers, but here also we find the same confusion and absence of principle as in other branches of administrative law. The term of the superintendent of public works, for example, is merely to the end of the term of the governor by whom he is nominated and that of the superintendent of prisons is for five years unless sooner removed. The term of the civil service commission is six years, that of the superintendent of insurance, three years, that of the health officer of the port, four years, and so on. It would baffle the skill of the best casuist to discover any reason for such differences in terms.

Of course, it is commonly recognized that those officers who are required to have technical and professional skill should enjoy longer fixed terms than those whose functions are purely political. Indeed, organizations representing the various professions, knowing the relation between permanence and efficiency in private business, have sought to establish it in public business by recommending long terms for technical officers. Such recommendations, however, overlook two fundamental facts, namely, that no business corporation, except in rare cases, would for a moment agree to keep a technical expert for a term of ten years, no matter how inefficient he might prove after a trial or what impairment of faculties might set in within six months, and that the technical experts who have rendered the most acceptable service to the federal government are not protected by long terms of service requiring an extraordinary process for removal. This should lead us to inquire whether the highly desirable permanence of tenure for technical experts cannot be secured by some other means than a fixed term guarded against removal, which fails to protect the public against an evil of equal magnitude, the long continuance of inefficient persons in office.

Such an inquiry reveals at the outset the fact that we have attempted to secure responsible and efficient government without utilizing the means which are known to be effective for locating and enforcing responsibility, and have adopted methods for obtaining efficiency which are repudiated in institutions, both public and private, where efficiency obtains. We have sacrificed, perhaps unwittingly, honest and efficient government to our fear of vesting power in the hands of our public officers. No business, public as well as private, can be successful if those who are in charge of it are not given powers commensurate with their responsibilities. It may be that political expediency makes it desir-

able to create such a confusion of offices, terms and authorities as to prevent any person or group from doing much harm (except when a party organization controls all of them unofficially). If so, then the quest for honesty and efficiency all through the government is futile. Efficiency depends upon responsiveness and responsibility and these depend upon the possession of adequate authority with means adapted to its effective exercise.

Defects in Departmental Organization

The foregoing is a general statement setting forth the basis for considering what defects there are in the organization of the state government for purposes of administration and an appraisal of provisions for the chief executive. The part of this report which follows deals with the organization of the administrative departments, commissions and offices, and the conclusions drawn in nearly every case would be equally applicable whatever be the overhead or central executive machinery of control. In fact, if there were no provision for a single chief executive, if the governor were only a part of the legislature and each head of department or other administrative agency were required to deal directly with the legislature, the organization would be defective in nearly every particular noted below.

CHAPTER X

ORGANIZATION FOR THE ADMINISTRATION OF THE STATE'S PROPRIETARY AND OTHER GENERAL FUNCTIONS

Before discussing the administrative organization for rendering service to the public—*i. e.*, for doing the things which contribute to the welfare of citizens—it seems desirable to consider those functions which have to do with the state equipping itself for service. There is a whole group of official activities that constitute what is sometimes called the business side of public enterprise or the relation of the government to the state, acting as a proprietor—administrative acts associated with:

1. State financing or procuring funds such as:
   a. Assessing and equalizing the valuation of property for purposes of direct taxation
   b. Fixing indirect revenue charges
   c. Collecting revenues levied or charged according to law
   d. Selling bonds and issuing other evidences of debt for funds, or refunding
   e. Caring for funds and securities acquired
   f. Disbursing funds in liquidation of debt and obligation incurred in making purchases
2. Contracting for personal services
3. Purchasing services other than personal, such as printing, advertising, transportation, materials, supplies and equipment and other properties
4. Providing for the custody, the preservation and disposition of property of the state while not in use, and a method for determining whether properties are cared for while the users are to be held responsible
5. Keeping the accounts needed to control the administration of funds and properties, and for the preparation of reports on assets, liabilities, revenues, expenses, surplus or deficit
6. Providing for the preservation of official records and documents other than those in use by persons who are to be held responsible

Present Agencies of the State Included in Group

Already the state, as a matter of common sense and common thinking, is making this distinction in its organization for doing things. The activities referred to are now performed by:

Secretary (for the) of state
Treasurer

Comptroller
Tax department
Department of excise
Commissioners of the land office
Conservation department
Sinking fund commission
Canal fund commission
Organizations for care and maintenance
Central purchasing agencies
Civil service commission
Department of elections

Generally speaking, there is a fairly clear recognition of the proprietary as distinct from the public service functions in the organization of all these. The exceptions are noted in the discussion which follows, and in the chapter dealing with the comptroller whose office does not belong in the group for the reasons already discussed, viz.: that the primary function of the comptroller, as independent auditor, makes it incompatible for him to administer funds and properties and to carry on transactions and assume responsibility for conditions and results that are to be made the subject of report by him to the "representative" body and to the "citizenship" of the state whose property is involved. Eliminating, therefore, the office of the comptroller (the subject treated in Chapter VIII), the offices administering functions within the group and what are regarded as the defects of organization are taken up in the order listed.

Need for Correlation of Official Action and Responsibility Involved in the Handling of Proprietary Activities

Before coming directly to the consideration of the organization for carrying on the proprietary relations of the state, it is of interest to observe that in England, France and Germany, and other great governments in which provision is made for the location and enforcement of "executive responsibility," these functions are in general grouped together as a department of treasury, with varying exceptions, such as the administration of rules and regulations governing employment—civil service provisions, etc. In England, for years, not only the great funding and trading relations were carried on and controlled from the treasury, but so were the rules, regulations and conditions governing civil service. The present civil service commission is largely a legislative and judicial body, rather than an administrator of rules governing transfers, promotions, salary increases, etc. In all countries where a cabinet system exists, the budget proposals are prepared in the central department having charge of the finances and the minister over the treasury

is not infrequently the one to represent the executive in submitting and defending requests for appropriations, as well as the budget before parliament. It may be noted, also, that it is on account of the necessary detachment of the executive and administrative officers handling these matters of finance and control over the proprietorship from all persons who are the heads of service departments that the prime minister or chief executive frequently chooses that portfolio so that he may be the leader of the group. For him to take the executive leadership of any of the departments which exist to serve the public, would necessarily be to throw in his lot with officers who are the promoting spirits of government, as distinguished from those who must find money, men, and material with which to carry on the enterprise. Taking the portfolio of the treasury puts the prime minister in a position to consider each proposal coming from a public service department in its perspective. When so organized, the central staff agencies of the government, which are created to keep the chief executive informed, are not infrequently a part of this department. For cogent reasons, however, they may be quite disassociated, and the proprietary functions may be carried on under a head to whom the central staff is not answerable.

Technical Advantages of Grouping

Aside from the better correlation of interrelated functions by grouping the financial and other proprietary functions, there is an advantage which comes from having a single "political" head—a vice-governor, under whom all these activities are carried on. This makes possible using the "political" head to cooperate with the chief executive in making effective his leadership. What is quite important, it makes possible the development and retention of highly "technical" officers to care for the diverse operations having to do with budget-making, financial administration, procedures, and custodianship.

While it is readily accounted for historically, there is nothing in the annals of human affairs that is more unsound than the present organization of the state's business relations and activities. There is in it not a commendatory feature when considered from the viewpoint of requirements for "responsible" administration. The old saying that what is everybody's business is nobody's, would have ample justification if its sole use had been to characterize the constitutional and legal provisions for the management of the estate of that corporation which now spends upwards of $50,000,000 a year, and which is possessed of properties of ten times this value—known as the government of the state of New York. Essential defects in this part of the organization are responsible largely for the high cost of government—defects which will never be overcome so long as the technical requirements of proprietary management are lost sight

of and the business of the state is left to a group of "political" tyros, each of whom may act independently of any central executive who may be made "responsible."

Secretary of [for the] State

The name secretary of state has not here nor in any other place in the world, the significance given by the federal government. In England, the term has no significance when standing alone. In colonial organization, the secretary performed the function largely of secretary to the governor. In New York, he was the one who represented the proprietorship. Since the independent state government was established, the office has had a diminishing significance. Unless the present officer is restored to the position of secretary to the governor and made his appointee, removable at will, the only excuse for retaining the office as a separate department, would be to make the secretary the head of the proprietary group. The present working relation of the office of secretary of state has about the same significance and relative importance as the vermiform appendix in the human body.

The constitution of New York provides that there shall be a secretary of state chosen at a general election at the times and places of electing the governor, but it does not create a department of state and define its functions in general or in particular. The duties of the secretary of state as they have been evolved by statute law are these:

1. He has custody of the state archives and the great seal of the state.
2. Superintends the printing and distribution of the session laws.
3. Issues patents for lands and notices for elections.
4. Records commissions and pardons issued by the governor.
5. Has custody of certificates of incorporation of companies formed under general laws, except banking and insurance companies.
6. Reports annually to the legislature the statistics of crime received from the several counties and upon such other subjects as may be required by law or by resolution of either branch of the legislature.
7. Compiles the annual legislative manual.
8. Registers and licenses owners and operators of motor vehicles.
9. Licenses peddlers.
10. Administers oaths of office to members of the legislature and other state officers.

In addition to discharging his regular departmental duties, the secretary of state serves in an ex-officio capacity as:

1. Commissioner of the land office.
2. Commissioner of canal fund.
3. Member of the canal board.
4. Member of the state board of canvassers.
5. Trustee of Union College.
6. Member of the state board of equalization of assessments.
7. Member of the state printing board.
8. One of the designators of the state paper.

The details of organization of the existing department of state will be found on pages 31 to 43 of the descriptive report on the organization and function of the state government.

The Treasurer

The state treasurer is an independently elected, constitutionally designated, officer chosen for a term of two years at the times and places of electing the governor and lieutenant-governor. The treasurer is the custodian of all monies paid into the state treasury and also custodian of other special and trust funds, such as the insurance fund and special departmental funds.

The treasurer is ex-officio:

1. Commissioner of land office.
2. Commissioner of canal fund.
3. Member of the canal board.
4. Member of the state board of canvassers.
5. Trustee of Union College.
6. Member of the state board of equalization of assessments.
7. One of the officers empowered to designate the state paper.

The details of the organization of the office of treasurer with a description of the work of each employee of the department are to be found on pages 60-62 of the report on the organization and functions of the state government.

Historically the treasurer occupied a much more important position in corporate organizations, both public and private, than he does to-day. With the development of an independent auditor or comptroller and the establishment of a system of credit depositories of funds, the treasury is little more than a specialized bookkeeping office. In so far as it handles money, this is done by employees who correspond to receiving and paying tellers. Either the treasurer should be given executive duties which correspond roughly to the headship of a department covering every phase of administration of the proprietorship which is to be centrally

controlled, or he should be reduced to the position of a "technical" head of a treasury bureau in a proprietary branch of the service.

The theory of checks and balances which the founders of the republic intended to apply only in a broad sense to the legislature, and the executive was later carried to extreme lengths by the division of the executive department against itself. In this process, the governor has been in law, although not in the public mind, absolved practically from responsibility for administration. This is applied with special force to the finances by the adoption of the practice of making the treasurer as well as the comptroller elective by popular vote. This has been done on the assumption that these two officers were in charge of collecting and auditing functions and that they would continually watch each other and report neglect of duty.

If provision is made that the governor shall be the responsible head of the administration, the assumption that the treasurer should be independent fails. In the first place the two officers are almost uniformly of the same party and are subordinated by party loyalty to the outside irresponsible political organization. Even when the governor is in a weak position as at present the element of protection is thin and shadowy. Each is governed by standards and discipline of the dominant party control. We can discover no noteworthy instance of a treasurer waging war on the governor or vice versa. At the present time, this may also be said of the comptroller who is brought under the domination of an "irresponsible" system of party control. There is no marked instance of the comptroller waging war on the administration or the treasurer as the disburser of funds, for neglect of duty or malfeasance in office. But further than this the present organization is inconsistent with itself. The legislature in its financial measures, has not kept the logical functions of the two departments, collection, custody, and disbursement, and audit, entirely separate in practice, and has thus destroyed in part the very ground for their separate distinct organization and for popular election of the incumbents.

Members of the convention are familiar with the organization of the financial administration of the federal government which combines the functions of treasurer and auditor in one department and makes the whole responsible to the president who in turn is responsible to the public. While the combining of auditing and administrative functions is not urged for reasons already stated, the history of 125 years amply proves the desirability of making the treasurer a part of a coordinated plan for administering the affairs of the government. Further confirmation of this conclusion is found in the fact that this is the original relation of the treasurer in every existing government which provides for a responsible chief executive.

The Comptroller.

The work of this office is the subject of Chapter VIII.

Until the passage of the Hinman act amending the tax law and establishing the state tax department, the comptroller was in charge of several important financial functions in connection with the supervision of the levying and collecting of taxes. The governor has signed the bill and when the office is organized practically the only proprietary activity carried on by the comptroller will be the general supervision which he exercises over the state printing. This responsibility should be placed in an officer who performs the services of a central purchasing agent and the comptroller should be in a position to pass critically and report on his acts.

Need for a Central Accounting and Property Division

No more potent argument in favor of the establishment of an executive organization for providing administrative information, through the keeping of accounts, can be had than that presented during the governor's hearings of finance bills. There the chief executive of the state, responsible to the people for the economical administration of all departments immediately under his supervision and partially responsible for all expenditures on account of the veto power vested in his office, is required to pass upon detailed financial requirements without any machinery having been provided to supply the needed information.

The only central accounting agency at the present time is that maintained by the comptroller. All accounts are established by the comptroller for the purposes of his office, and, considering this fact, it is not surprising that these accounts do not reflect the information necessary to the chief executive in the administration of his many departments. It would be as unwise to require the comptroller to maintain the kind of accounts needed by the governor as it would be to continue the present inadequate system. The comptroller is responsible to the people for one specific function, *i. e.*, financial auditing. The governor is responsible to the people for the administration of the state's affairs. The accounts needed to prevent the misappropriation of funds or mischarging against appropriation bills are entirely inadequate and essentially different from those needed by the chief executive in enforcing proper administration in the various departments, bureaus and offices, for whose actions he is responsible.

What is needed is obvious: a central accounting and property division under the complete supervision of the particular official—the governor—to whom the information is absolutely essential for the enforcement of administrative economy and efficiency.

A Central Purchasing Division

With the exception of the work undertaken by the fiscal supervisor and special committees in the institutional departments and the central

control over the state printing, nothing has been done to place the purchasing of the state of New York upon an efficient basis. Otherwise, practically every department, board, bureau and office of the state government carries on its purchasing wholly independently of any central control, except that of audit.

Economy in purchasing depends upon two factors: (1) the establishment of standard specifications, and (2) the standardization of purchasing methods, which is usually accompanied by the centralization of a large part of the purchasing.

What is needed is a strong central agency which will develop and enforce the use of standard specifications, standardize purchasing methods and actually purchase all supplies, materials and equipment which can economically be purchased through a central agency.

It has been suggested that when the salary standardization and classification work of the present senate committee on civil service is completed, its activities be directed to the standardization of purchasing specifications. But no matter what agency is selected for the pioneer work in this study, it is essential that some organization be set up which will carry on the routine activities connected with the standardization of specifications and purchasing methods.

In addition to these departments of government which are designated in the constitution and which have been developed by legislation, there are a number of other departments charged with financial and proprietary functions. These are entirely separate from the departments designated in the constitution.

The Tax Department

The present tax department, as reorganized by law during the last session of the legislature, is a development from a former organization called "the tax commission." The duties of the new tax department, which is under the supervision of a commission, may be briefly stated as the combined duties of the former board of tax commissioners and the former duties of the comptroller in supervising the levying and collection of corporation franchises, transfer and mortgage taxes. The former board of tax commissioners had supervision over the local tax officials, and every second year were required to visit each county to inquire into methods of assessment. It approved assessment maps for cities and towns, determined appeals in the matter of county equalization of assessments, fixed and determined annually the values of special franchise property and equalized the assessment thereof with other real property in the city, town or village where special franchise property is located, supervised the operation of the mortgage tax law, audited the mortgage tax collections and examined the records of county clerks and registers in connection therewith. Members of this board were also members of the state board of equalization that prepared data on

which the equalization table was adopted. This duty has also been transferred to the new tax department. For further detail as to the organization of the former tax commission see pages 263-267 of the report on the organization and functions of the state government.

The transfer tax bureau, the corporation tax bureau, the secured debt tax bureau and the mortgage tax division, formerly of the comptroller's office, had charge of the activities transferred to the new tax department. A detailed statement of the organization and functions of these divisions of the tax commission and the comptroller's office before the transfer may be found in the descriptive report on the organization and functions of the state government. In this relation attention is called to the fact that the reorganization does not provide for the establishment of amounts to be collected, and for the collection of the amounts so determined. This is a division of functions that could be readily made in case of consolidation of all financial functions under one "political" head with separate "technical" bureau heads for carrying on the business.

Department of Excise

Certain activities of the department of excise are to be included in the general proprietary activities of the state. These have to do with licensing liquor dealers or the determination of facts and conditions, knowledge of which is essential to fixing the charge. The department also collects amounts assessed against retail liquor dealers, together with fines, penalties, forfeitures and transfers and pays one-half of same to the city or town in which the collections are made. In addition, the department collects taxes paid by the bottlers of malt liquors and common carriers, and forfeited tax bonds. It prosecutes or defends civil actions or proceedings brought under the liquor tax law. (See pages 125-131 of report on organization and functions of the state government.)

Here is another case of defective organization due to the decentralization of the financial functions, and the collection of discordant functions under the one administrator. It does not contribute to good administration to put in the hands of one man the powers and duties above enumerated unless provision is made for central control through inspection, etc. If all the financial functions were under one executive there would be a choice of alternatives that is now lacking.

The Centralization of Financial Administration

The mere enumeration of the different departments and boards and commissions having financial functions and their respective duties is itself a criticism of the present system. The decentralization of revenue control is thus evident. For example, the tax commission, the board of equalization, and the comptroller's office all have arbitrary jurisdictional

rights over certain phases of the state's taxation and revenue problems.

Moreover, practically all of the important departments of government and the governor himself are engaged in collecting miscellaneous revenue through the issuance of various kinds of licenses, permit privileges and the charging of fees that could be much more effectively managed if the whole subject were considered as a part of one problem.

Year after year recommendations have been presented to the legislature and bills have been prepared looking toward centralization of related financial activities. The opportunity is now presented to the convention to provide efficient and responsible financial administration through the creation of great departments of government and the proper delimitation of their spheres according to standards worked out and successfully applied in both public and private business.

Conservation Department

The conservation department by its title is essentially a proprietary organization, but on account of the fact that certain protective and regulative duties have, in the past, been assigned to this department, only certain of its activities come properly within the scope of this chapter. These are the work of:

1. The division of lands and forests—which is charged with the administration of the laws enacted to protect the lands and forests of the state which comprehends tree culture, reforestation, care and management of state parks and reservations, and the protection of the lands and forests from fire.
2. The division of inland waters—which is charged with the administration, subject to the approval of the commission, of all laws relating to state jurisdiction over water storage and hydraulic development, water supply, river improvement, drainage, irrigation and navigation of water ways other than canals.
3. Division of fish and game—which is charged with the administration, subject to the approval of the commission, of the laws relating to state jurisdiction over fish and game, and for the propagation thereof, including the propagation and protection of shell fish and shell fish beds, the issuance of hunters' licenses and the maintenance of a game protective force.

(See pages 727-741 of report on the organization and functions of government.)

There would seem to be little reason for the existence of a separate department of conservation in any event. Having in mind effective correlation of functions, there is another group, "Public Works," into which it might be brought for purposes of administration. The justification for this would be that, while the works group is one which renders a public service in operating a canal, its primary function is providing public facilities for transportation—the primary prerequisite of which is the acquisition and maintenance of great state properties. The setting aside of the conservation divisions as a special proprietary group could be justified by reference to the highly specialized and technical requirement of proprietary management. Again there are direct public aspects of the conservation department which would suggest placing it in some public service group. It is only a question as to which would provide the better correlation of activities and forces used.

Commissioners of the Land Office

Public lands of the state and general management of Indian affairs are under the control and direction of this commission—an ex-officio board composed of the secretary of state, lieutenant-governor, speaker of assembly, comptroller, treasurer, attorney-general, and the state engineer. This has all the weakness of an ex-officio organization. What is needed is an administrative head who is responsible to an executive. In so far as it is desired to utilize the services of an ex-officio board they should form an ordinance body, and not an executive.

A group of state agencies closely allied in their functions to those now vested in the conservation department and land office, is found in the various commissions charged with custody of historic buildings and parks scattered over the state. These will be found described in the report on organization and functions, pages 725 to 755. With whatever group the conservation work is associated, it is thought that the supervision of these parks and memorials might well go with it.

The Attorney General

It has been said concerning administrative law that legislatures express opinions about what should be done, but the one who makes the law is the corporation counsel or attorney general. What is meant is this: that the law must be construed each time an officer acts; that with respect to perhaps nine hundred ninety-nine acts out of a thousand there is no difference of opinion between officers as to the way it should be construed; that when differences arise these are referred to the executive who must give final approval, and if he does not wish to assume responsibility for deciding what construction should govern the transaction he refers the matter to the law office for opinion. Now, the law officer is simply an adviser, but what gives him his power as a lawmaker is the fact that

executive or administrative officers may be absolved from legal responsibility for an act if it is according to the opinion of the attorney general. There being no way of locating and enforcing responsibility for official acts politically through a chief executive, it is thought that the thing to do is to make the law officer directly responsible through the electorate for his opinions. And so it is that in a large number of our irresponsible representative governments the law officer is elected. But it is also of interest to note that in all responsible representative governments the law officer is appointed, and in the federal government the attorney general is a member of the president's cabinet, removable at his will. There, whatever conclusion may be drawn with respect to the position of the president as chief executive, he is the only one that must go before the people to explain his acts, and must assume political responsibility for acts of the administration based on the opinions of the attorney general. What is of special interest is this: that a thousand opinions are asked from the law officer to one asked for from the courts; that under our system the law officer makes the law governing the administration of affairs; that making him politically independent gives to the executive another way of dodging political responsibility; that it is a conception of organization that finds its justification as a "check" in a government which has no politically responsible head.

Given a political system in which there is a real chief executive, then the political independence of the law office presents only vices with no offsetting virtues. The vices are found in the continuing development of "rep tape." When it would be in the interest of better administration to cut it, the executive is constantly confronted by adverse opinions of the law officer that makes it many times more difficult for him to exercise what would otherwise be perfectly good executive discretion. When a matter comes before the executive he must first decide whether he will assume responsibility for action without referring to the law officer for advice, or run the risk of an opinion which is adverse. And the disposition of the office is likely to be adverse. The reason is obvious. The law officer has no political or other responsibility in common with the executive. He is always safe in saying that what has been done for years is in accordance with law, but, whatever be the business or administrative considerations which demand a departure from old practice, when he gives an opinion supporting such departure, he runs the risk of being attacked. And all the forces which link the old contingent, those who stand for continuing the ancient practice because of all of the personal interests, both inside and outside the government, that have become crystalized around it, are organized for the attack.

If any national or personal interest is jeopardized which is cognizable in a court of law, this interest may be amply protected, and the

law office as at present organized is simply one of the great negative forces in government—a negative force that in its operation is responsible for the construction of some of the most involved, unbusinesslike, ludicrous practices which, in a system that provides only for divided powers and no effective central executive control, continue to become more involved and unbusinesslike with each added legislative requirement. Laws made by detached committees, procedures elaborated by detached bureaucracies; practices developed without controversy by construction "down the line"; situations arising that could not be foreseen demanding a change in practice; proposals referred to detached, irresponsible executives—irresponsible so long as they do not make changes; references to a detached attorney general to avoid executive responsibility; the law officer for self-protection, doing the same thing—these are among the things to be considered when deciding whether the constitution should provide for a responsible chief executive, and a law officer who will be constituted a general staff adviser.

An Employment Department

Already the function and purpose of a civil service department which would operate positively instead of negatively and be co-operative in the development of better conditions for employees and better conditions for management have been discovered as a part of Chapter IV. In this relation question is asked as to whether this department should not be so developed that there would be a close working relation between it and the officers charged with responsibility for preparing the budget, for making contracts for services other than personal, such as repairs, construction, printing, etc., and for decisions on matters of administrative law. Every request for departmental appropriations involves questions fundamental to civil service; one of the requisites of decisions as to whether the government will undertake its own repairs, constructing, printing, etc., is conditions governing employment; every decision having to do with proprietary matters may make it desirable to have friendly legal advice. Whether a cabinet system is considered or not, the question as to what will be the means of correlating all these activities dealing with proprietary matters—matters of finance, of purchase, of employment, as well as custodianship of funds and properties of the state—is squarely before the convention. If a cabinet system is favored, then question is raised as to whether the branch handling employment shall be made a department and the head given a place in the cabinet along with the attorney general and the finance officer—the three to constitute a proprietary and staff group in the cabinet, whose interests comprehend the entire administration, as distinguished from the public service group, each executive within which is interested in earning for himself applause by obtaining facilities for promoting a particular service.

CHAPTER XI

ORGANIZATION FOR THE ADMINISTRATION OF MILITARY FUNCTIONS OF THE STATE GOVERNMENT.

Whether from a sense of necessity, or due to the fact that more experience has been gained in the organization of this branch of the public service, before the adoption of the first constitution, provision for central direction and control over the administration of the military functions has been more fully developed than have the provisions for the central direction and control of the non-military public service functions of the government. From the beginning, the governor has been constituted the "commander-in-chief of the military and naval forces of the state" thereby being made the responsible leader with the power to direct and control. Since 1846 the governor has also been given an organization by means of which this responsibility may be discharged—an organization suited to the exercise of his executive powers. To assist the governor in the performance of his duty as head of the military forces, he is not only given the power but it is made his main duty to "appoint the chiefs of the several staff departments, his aide-de-camp and military secretary, all of whom shall hold office during his pleasure." And the duty is imposed on the legislature to appropriate a sufficient amount to cover the military expenses. This later provision was also made constitutional law in 1846, and has since remained. Especial attention is called to the fact that the constitution definitely contemplates that the governor shall have "staff" departments, and shall be given the overhead personnel and organization for keeping in touch with military activities. Whereas in the civil departments no such constitutional provision has been made, except in providing a "civil service" recruiting organization, and for two years a staff department called the "department of efficiency and economy."

The "administration" of the military government of the state has at all times been considered as an organization separate and distinct from the civil government, and having no point of contact with civil government except in a common executive, a common treasurer, and legal adviser, the attorney general. From the beginning, it has been based on the idea of a citizen soldiery, it being declared in the constitution of 1777 that "it is the duty of every man who enjoys the protection of society to be prepared and willing to defend it." The exception made in the first three constitutions was of persons who had conscientious scruples against military service, who might be excused by paying an exemption fee that in 1728 was fixed at ten pounds ($50.00) per year. The constitution of 1894 made "all ablebodied male citizens between the ages of eighteen and forty-

five years, who are residents of the state" members of the state militia. The first constitution provided for the storage of military equipment and supplies in each county in the thought that the inhabitants would organize themselves for military practice, thereby keeping themselves in preparedness, and show their willingness to perform military service.

While the government has a right to impress persons into military service, it has usually been revolutionary, and the original concept of military organization was that it should be thoroughly democratic. The persons who came together for the purpose of defense organized themselves just as they would for any other purpose, being empowered to select their own officers. This early practice was incorporated in the constitutions of 1821 and 1846. The provision with respect to election in 1821 being: "militia officers shall be chosen or appointed as follows—captains, subalterns, and non-commissioned officers shall be chosen by the written votes of the members of the respective companies; field officers of regiments and separate battalions, by the written votes of the commissioned officers of the respective regiments and separate battalions; brigadier-generals by the field officers of their respective brigades; major-generals, brigadier-generals, and commanding officers of regiments or separate battalions shall appoint the staff officers of the respective divisions, brigades, regiments, or separate battalions." At this time, the governor with the consent of the senate appointed all major-generals, brigade inspectors, and chiefs of staff departments except the adjutant general and commissary general. The adjutant general, the administrative head of the militia was appointed by the governor, alone, though the commissary general was appointed by the legislature in the same manner as the treasurer, the attorney general, and the comptroller on nomination of the council of appointments. In 1894 the constitution was amended so that the legislature may pass laws for changing the mode of election and appointment of the military personnel, by a vote of two-thirds of each house. But it was specifically provided that the governor shall nominate and with the consent of the senate appoint all major-generals, and that he alone should appoint and remove at will the adjutant generals and other staff officers, the military aid and secretary, so that these officers are placed beyond the power of the legislature to break down the control of the executive over the branches of the military service.

Specifically, the organizations charged with carrying on various subfunctional activities are:

1. The adjutant general's department.
2. The state board of armory commissioners.
3. The armory board of the city of New York.
4. The national guard.
5. The naval militia.

The Adjutant General's Department

Under the governor the adjutant general is the executive head of the military department. What is called his "department" is an organization for assisting him in carrying out his functions as chief administrator. The department is charged with issuance of orders, the auditing of militia accounts, the keeping of financial and military records, the receipt, custody and issuance of military stores, supplies uniforms and equipment, and the accounting to the federal government for government stores, and supplies issued to the state. In case of war, the adjutant would be responsible for organizing the reserve forces of the state, after the organized militia had been called into active service.

The State Armory Board

This organization, consisting of the commanding general of the national guard, the commanding officer of the naval militia, and the brigade commander in whose department the particular armory is situated, has general supervision of the construction and maintenance of the various armories of the state other than those, except two, within the city of New York.

The Armory Board of New York City

This organization, consisting of the mayor, the comptroller, president of the board of aldermen, president of the department of taxes of New York City, the commodore of the naval militia, and the two brigadier generals in command of the brigade stationed in New York City, has general supervision of the construction and maintenance of the armories owned and operated by the city of New York.

The National Guard and the Naval Militia

The national guard of the state of New York consists of the various organized regiments of infantry, cavalry, engineers, and artillery with their usual staff agencies. The naval militia consists of the organized naval forces of the state.

Relation of State Militia to the Federal Government

The military organizations of the various states have a dual allegiance which is recognized to the extent that the expenses of training and equipping the state troops are borne partly by the United States government, and partly by the state. The responsibility for the protection of any state from invasion having been assumed by the national government, the only important state duty upon which the militia is liable for call is in the case of strike or riot.

The military functions of the militia are to cooperate with federal authorities against a national enemy and the entire program of training

has been to this end. The national guard is the reserve of the federal army. In order that the state troops will be uniformly instructed and equipped, the war department and the navy department have prescribed certain regulations for controlling the national guard of the various states. The division of militia affairs of the war department and the division of naval militia of the naval department were organized especially for this work, and in addition, both departments assign officers from the regular army and navy to act as instructor inspectors to the militia. This is a cooperative relation, however, which is permitted by sufferance on the part of the state governments—the regulations promulgated by the federal authorities are not binding in any way upon the state forces.

State Constabulary

From time to time the subject of a state constabulary has come up for discussion. Without going into the desirability of such a corps as a state police force, it would have a bearing on the need for the development of the state militia. The organization of a constabulary would greatly lessen the chances of using the militia in strikes or riots, thereby making the service in the militia more attractive and would remove the militia from the necessity of performing a kind of service that is dictated more or less by class or semi-political interests.

Conditions Which Make for Irresponsibility

Having briefly described the present organization it remains to call attention to what seems to be defects from the view-point of administration. These apparent defects are brought out in the official relations of the heads of the "line" and "staff"; the assigning of line "military" duties to the adjutant general; the unnecessary clerical work put on the governor in signing commissions of all officers, provisions for construction of armories, and the present provision of law placing the burden of maintaining part of the armory on localities.

The major-general who is the chief line officer of the national guard, is appointed by the governor, with the advice and consent of the senate and holds office until he attains the age of sixty-four years, but is removable only by the order of a general court-martial, or by the order of the senate after public trial and conviction on the charges of misconduct.

The power of appointment carries with it no disciplinary force—only the power of removal may be used to enforce responsibility and that is reserved to the senate. The commodore holds a position in the naval militia similar to that of the major-general in the national guard. As distinguished from these, the adjutant general is appointed by the governor to serve during the term of the governor, and as has been pointed out, he is removable at the will of the governor. The adjutant general

is the medium of communication between the governor and the organized militia—a vice governor on military affairs of the state. Thus we have a condition in which the chief staff officer of the organized militia, who is responsible to the governor, issuing orders in the name of the governor to the chief line officers who are irresponsible or if at all responsible, only to the senate. The chief executive should consequently be given the power to call for the resignation of the major-general, and appoint another from the line without putting the incumbent out of the service. This would simply mean that the executive would be responsible for the direction and control of the forces. It would be consistent with good military organization.

Questions Pertaining to Rank

No military qualifications are necessary for appointment to the office of adjutant general, which insures to the governor the greatest freedom in the selection of his appointee. However, the incumbency carries with it the military rank of brigader general, which, in turn, raises the question of what to do with our ex-adjutant generals. The problem has been solved by assigning the adjutant general to the list of brigader generals, just before the end of his term. It may be seen that political pressure might be brought upon the governor to saddle upon the next administration a brigader who, though he may have been an excellent adjutant general is without qualifications or experience necessary for a general officer. The technically qualified commanding officer of the national guard holds the rank of major general,—one grade above that of brigadier. This arrangement is another serious objection to the present plan of granting military rank to the adjutant general.

The Signing of Commissions

The constitution requires that "commissioned officers shall be commissioned by the governor as commander-in-chief." The practice of signing appointments of commissioned officers is merely routine as the governor cannot, and is not expected to have knowledge of the qualifications of the persons so appointed, and since he must, of necessity, rely upon the advice of his adjutant general, it would seem that this duty should be performed by the person who is assuming responsibility, as a vice governor in charge of the military department. The signature of the governor may add to the historic and personal value of the document so signed, but this is only one of the many routine duties placed on the governor by constitution and statute, which could well be removed.

Construction of Armories a Quartermaster Duty

The ex-officio board whose duty it is to supervise the construction, alteration and maintenance of the armories of the state and other mili-

tary buildings, is a cumbersome organization. It is responsible to no one. In the event of war, all the officers of this board except the adjutant general, would be expected to be in the field. The duty of caring for the armories would be thrust upon the adjutant general whose time then would be largely taken up in the organization of the reserve militia. The present constitution of the state of New York gives the adjutant general the powers and duties of the several staff departments of the militia. The quartermaster corps is the staff agency which is charged with furnishing the necessary supplies (not military), shelter and transportation for the army. It would seem that caring for armories is within the scope of this agency's proper functions.

New York City Performing State Functions

With two exceptions, New York City owns and pays bills for the alteration, repair, maintenance, and operation of the armories situated in that city. The criticisms of the state board are equally applicable to the armory board of New York City. In addition, the system is open to further criticism:

1. The board is made up largely of political officers elected on municipal issues.
2. The military is inadequately represented.
3. The administrations of the city and the state might be of different political parties, and this board be used as a means whereby the city could seriously embarrass the state government in the development of its financial and military policies.

CHAPTER XII

ORGANIZATION FOR THE ADMINISTRATION OF PUBLIC SERVICE FUNCTIONS

As has been pointed out, the civil services which are rendered directly to the public by the government are now organized without any attempt at correlation and without adequate provision being made for executive direction and control. This condition is described and discussed in chapters VII. and IX.

The Need for Grouping Services for Purposes of Administration

While the question may be raised with respect to the desirability of central executive control and it may be contended that it is better to have many executives who are responsible directly to the legislature, or responsible directly to the people, through independent elections, this controversy does not enter here.

The intelligent and efficient administration of public services requires that they be so grouped that those which are intimately related and interdependent in their operations shall be under the same excutive. For the purpose of considering the defects in the present organization, therefore, the various direct services to the public which are not military in character are considered under group heads corresponding to the functions listed on page 90.

PART I.—ORGANIZATION FOR THE ADMINISTRATION OF ACTIVITIES HAVING TO DO WITH THE PROMOTION OF AGRICULTURE AND INDUSTRY

The functions which may be enumerated as promoting agriculture and industry may be briefly outlined as follows: The cooperation with farmers and farmers' organizations in the establishment of farmers' institutes and farm bureaus; the education of agriculturists and the general public in matters relative to agriculture, farm economics and kindred subjects through conferences, lectures, exhibits, demonstrations, bulletins and reports; the prevention of diseases of animals and plants and the stamping out of injurious insects or other pests; the promotion of animal husbandry and the protection of the life of animals useful to man; the inspection of farm lands, methods of cultivation, stock raising and handling in state and county institutions; the inspection, testing and grading of agricultural products, commercial feeding stuffs and fertilizing materials; the issuance of licenses for the sale of farm produce on commission, milk gathering stations, manufacture and sale of fertilizers and commercial feeding stuffs; the collection and compilation of agricultural statistics and information valuable to farmers, immigrants, farm

laborers, etc. Very little has been done to promote enterprise other than agriculture, but whatever the state undertook to do of this character would be in this group of activities.*

The head of the department is a commissioner, appointed by the governor by and with the advice and consent of the senate for a term of three years. Assisting him are four deputies, who are appointed by the commissioner. Their duties may be briefly outlined as follows:

1. General deputy (Albany office) is in direct charge of the work of the various bureaus of the department and in the absence of the commissioner acts in his stead.
2. The deputy in charge of state farm lands (Albany office) supervises the advisory and cooperative work in connection with the farms of state hospitals, charitable institutions, prisons, reformatories, almshouses and other state and county institutions; assists the bureau of veterinary service in the disposal of cattle which react to tuberculin; addresses farmers' institutes and agricultural societies on matters of interest to them.
3. The deputy in charge of the Buffalo office has supervision of the work of the department in the counties of Cayuga, Chemung, Genesee, Livingston, Monroe, Ontario, Schuyler, Seneca, Steuben, Wayne, Wyoming, Yates, Alleghany, Cattaraugus, Chautauqua, Erie, Niagara and Orleans. He has supervision also over the Buffalo division of the bureau of dairy products, which is concerned with the work of agents and inspectors investigating violations of the agricultural law relating to dairy and food products and of the veterinarians and chemists in his territory.
4. The deputy in charge of the New York office has supervision of the work of the department in the counties of Queens, Richmond, Rockland, Suffolk, Westchester, Nassau and Greater New York City. He supervises specifically the work of agents and inspectors investigating violations of the agricultural law relating to dairy and food products, and of the veterinarians and chemists within his territory.

Conservation Department

The division of fish and game of the conservation department is charged with the execution of the laws relative to the protection and propagation of fish and game; the issuance of hunters' and fishermen's

* See report on organization and functions, pages 299 to 315, inclusive, and chart G A, page 298.

licenses and the maintenance of a game protective force; the supervision of fish hatcheries and game preserves and the stocking of streams and forests with game; the cooperation with individuals and associations for the protection and propagation of fish and game (See report on organization and functions, pages 734 to 739 inclusive and chart K A, page 726).

The work of the division is carried on through several bureaus or branches of work as follows:

1. The bureau of protection of fish and game supervises the work of game protectors; issues hunting and trapping licenses to the county clerks and examines their reports; issues licenses for the possession of venison and the shipment of game, and receives, examines and files applications for pheasants and eggs.
2. The bureau of inland fisheries issues licenses to fishermen and enforces the rules of the commission relative to the granting of such licenses.
3. The bureau of marine fisheries supervises the work of fisheries' protectors; makes surveys of marine fishing grounds and grounds for the propagation of shell fish.
4. The game farm is conducted for the propagation of game.
5. Fish propagation is carried on through several hatcheries throughout the state. The foreman of the various hatcheries are under the direct supervision of the chief fish culturist. There are 10 stations for fish propogation located at—

   Adirondack,
   Bath,
   Caledonia,
   Chautauqua,
   Cold Spring,
   Delaware,
   Fulton Chain,
   Linlithgow,
   Constantia,
   Ogdensburg.

The State Fair Commission

The state fair commission consists of seven commissioners, five of whom are appointed by the governor for terms of five years each. The president of the senate and the commissioner of agriculture are ex-officio members of the commission. The commission is authorized to hold a state fair at such times as it may deem proper, and make or amend the

rules and regulations necessary therefor; appoint and remove assistants and employees; receive all moneys payable to the state on account of such fair and make all disbursements therefrom, and also from any legislative appropriations for the state fair. The provisions of the state finance law do not apply to the state fair commission. (See report on "Organization and Functions" pp. 317 to 322, inclusive, and chart GB p. 316).

Experiment Station at Geneva

The agricultural experiment station at Geneva was created for the purpose of promoting agriculture by scientific investigations and experiment. The station is under the administrative control of a board of nine members which includes the governor and the commissioner of agriculture as ex-officio members. A director is appointed by the board of control who exercises personal supervision of the work of the station. (See report on organization and functions, pp. 343 to 348 inclusive, and chart GG p 345).

Lack of Correlation of Related Functions

The purpose of the department of agriculture as indicated in the preceding paragraphs is primarily the promotion of agricultural industry. There are however certain functions now provided for in the department of agriculture which are regulative and primarily for the promotion of public health rather than the promotion of agriculutre. These are the protection of the food supply, including milk, now performed by the bureau of dairy products, and the prevention of diseases of animals now under the supervision of the bureau of veterinary service. These functions are more fully considered in the chapter on promotion of public health.

One of the functions of the department of agriculture is the promotion of animal industry. It would seem that the function of protection and propagation of fish and game, which is now carried on by the conservation department, is very closely allied to work which is carried on in part by the department of agriculture.

The state fair commission though chiefly concerned with the holding of a state fair is in fact performing a very important function in the promotion of agriculture and agricultural industry. Here again correlation of the promotive and educational functions of the state fair commission with other similar and closely related functions would be desirable.

The agricultural experiment station is performing functions promotive of agricultural industry and its work parallels to a considerable degree that which is performed by various bureaus of the department of agriculture through its bureau of dairy products, its bureau of horti-

culture and its bureau of chemistry. Coordination of all research activities under a single technical head would reduce cost and improve service.

Need for Change in Tenure of Office of Commissioner of Agriculture

Because of the fact that the commissioner of agriculture is appointed for three years and the term of the governor is only two years, it is possible that only every third governor can control the appointment of the commissioner of agriculture. For example, assuming a change in the governorship every two years the first incumbent would be able through the commissioner he would appoint, to shape the general policy of the department during his entire administration. The second incumbent, however, would be able to exercise such influence only during the second year, or last half of his administration, and the third incumbent would be confronted throughout his entire administration with a hold-over commissioner who might be quite out of sympathy with the plans and the ideals of the governor.

The commissioner of agriculture should be appointed for an indefinite term but should be removable by the governor at his discretion. This would place the responsibility for the appointment of the commissioner and the policy of the department upon the governor, where it properly belongs.

Improved Coordination of Functions Within the Department of Agriculture Suggested

The present organization of the department of agriculture does not provide for effective coordination of related functions within its own organization, as is evidenced by examination of chart G A (page 299) of the report on organization and functions. For example, the bureau of supervision of cooperative associations, the bureau of farmers institutes and the bureau of agricultural statistics are all performing functions which are promotive of agricultural industry by educational field work and by the publication and distribution of information of value to the general public and particularly to those interested in the various branches of agricultural work. In the interests of economy and efficiency, a closer coordination of these bureaus under a single head is suggested.

Again there are certain functions in the work of prevention of animal diseases which are now divided among several bureaus of the department of agriculture. For example the bureau of veterinary service is concerned chiefly with the prevention of animal diseases and the promotion of animal husbandry, while the bureau of horticulture combines functions promotive of horticulture with those of the prevention of diseases of bees. Coordination of all functions having to do with the

prevention of animal diseases and the propagation of useful animal life suggests itself as a next step in improved administrative control.

Inspection service in the department or agriculture is specialized throughout the various bureaus. An inspector of the bureau of dairy products for example takes samples of dairy and food products, agricultural seeds, fertilizers, etc., for analysis by chemists assigned to his particular division; inspector of the bureau of horticulture take samples of insecticides for analysis by the chemists attached to his own division of work; the inspectors of the bureau of butter substitutes take samples of butter substitutes for analysis by the chemists attached to his particular division. Closer coordination of inspectional work under a single head or bureau of inspection would eliminate probable duplication of work.

The chemists of the department of agriculture are scattered throughout the state; five in Albany, one in New York, two in Ithaca, one in Buffalo, one in Canton. Administrative control of the work of chemists is therefore made difficult. It is not clear that the work of all chemists could not be better performed from a central laboratory located perhaps in Albany, or at the experiment station in Geneva, where all laboratory facilities for analysis and research are available. This is the plan adopted by the state department of health and it is found to work well.

Staff Advisory Council Suggested

At present the various agricultural schools though performing functions promotive of agricultural industry are not brought into as close contact with the work of the department of agriculture as is desirable. The creation of a staff advisory council to the commissioner of agriculture, composed of some or all of the heads or directors of the agricutural schools would serve to keep the department in touch with the agricultural needs and interests in the various localities and with the development of a definite program for educational work. Such an advisory staff should act as a legislative body in the preparation and promulgation of rules and regulations for the conduct of the work of the department of agriculture.

Part II.—Organization for the Administration of Public Works Functions

The public works activities of the state may be defined as the planning, construction, maintenance and operation of public buildings, highways and canals, and the conservation of natural resources insofar as they concern engineering supervision of the property of the state.

Organizations Now Carrying on These Functions

At present the public works functions of the state are being carried on by the following organizations:

Two legislative commissions	pages 18 and 19*
The Department of Highways	" 690—715
The Department of Buildings	" 717—721
The Department of Public Works (canal operation)	" 678—690
The state engineer	" 651—668
The canal board	" 669
The commissioners of the canal fund	" 669
The state architect	" 671—678
The trustees of public buildings	" 717
The Palisades Interstate Park Commission (part)	" 751
The Bronx Parkway Commission (part)	" 723—724
The conservation department (part)	" 727—741

The New York Bridge and Tunnel Commission

This commission is composed of four appointed commissioners and the commissioner of bridges of the city of New York. Three of the commissioners are appointed by the governor and one by the mayor the city of New York. The duties of this commission are to confer with the governor and the legislature of New Jersey for the purpose of securing the passage of an act by the legislature of that state providing for the appointment of a joint commission under proper legislation of both states to purchase the necessary land and water rights, and to secure necessary federal consent for the construction of one or more bridges over the Hudson River. This commission is also charged with the consideration of tunnel communication between the two states.

Commission to Investigate Port Conditions and Pier Extensions in New York Harbor

This commission consists of three commissioners appointed by the governor to act jointly with similar commissioners of the United States and the state of New Jersey to investigate port conditions and pier extensions in New York Harbor, and to recommend proper policy to be pursued for the best interests of the entire port of New York. The commissioners serve without compensation.

The Department of Highways

This department is under the executive supervision of a commissioner appointed by the governor for a term of three years, and is charged with

* The page numbers refer to the report on the organization and functions of the state government.

the construction and maintenance of all state roads and county highways and the supervision of the construction and maintenance of town highways.

Trustees of Public Buildings

The trustees of public buildings have supervision over the capitol and other buildings of the State at Albany. They revise all contracts for construction and repair before award. The board of trustees is composed of (a) the governor; (b) the lieutenant governor; and (c) the speaker of the assembly—serving without extra compensation.

Department of Public Buildings

The department of public buildings is under the direction and control of the trustees of public buildings. This department is charged with the care and maintenance of the geological hall, the state hall, the capitol and the executive mansion in Albany, and the state house at Kingston, and the maintenance and operation of the capitol power house, including the supplying of heat, light and power to the educational building.

Department of Public Works

This department is under the supervision of a superintendent of public works appointed by the governor by and with the advice and consent of the senate, to hold office during the term of the governor and is charged with the execution of all laws relating to the repair, navigation, construction and improvement of canals, except so far as such construction or improvement may be confided by statute to the state engineer and surveyor. The office of superintendent of public works and the general duties of the office are prescribed in the constitution.

Department of the State Engineer

The office of state engineer and the general duties of this office are implied in the constitution. The state engineer is charged with the supervision of the state topographical and hydrographical surveys, the examination and maintenance of the state boundary line monuments, the making of surveys in defense of claims against the state and such other engineering duties as may be prescribed by law. The improving of the canal system of the state and the construction of the barge canal and terminals have been placed under the supervision of the state engineer by statute.

Canal Board

The canal board consisting of the commissioners of the canal fund, together with (a) the state engineer and surveyor; (b) the superin-

tendent of public works; and (c) the attorney general, has jurisdiction over the fixing and changing of the canal land boundaries; determines what canal lands shall be sold, exchanged or abandoned; investigates all transactions connected with canals; examines and approves or disapproves canal plans and estimates submitted by the state engineer; controls the sale of surplus water of the canals or feeder creeks; grants permits for the erection of buildings on canal land for commercial or manufacturing purposes; and investigates charges against canal officials.

The Commissioners of the Canal Fund

The commissioners of the canal fund form an ex-officio board, composed of (a) the lieutenant governor; (b) the secretary of state; (c) the comptroller; (d) the treasurer; and (e) the attorney general. It is charged with the supervision and management of the canal fund; makes advances to the superintendents of repairs in the department of public works and may borrow money for canal purposes when authorized.

Department of Architecture

This department is under the direction of the state architect appointed by the governor by and with the advice and consent of the senate, for a term of three years and is charged with the preparation of drawings and specifications and the letting of contracts for the construction, alteration or improvement of all state buildings with the exception of armories, school buildings and buildings under the jurisdiction of the trustees of public buildings. The work in progress is supervised by the inspectors of the department. Progress summaries of work done, prepared by the inspectors, are used as a basis for partial payments to the contractors. By virtue of special legislation or special requests from the departments or boards in charge, the state architect often assumes supervision over the construction, alteration or improvement of buildings exempted from the arbitrary provisions of the general state architects' law.

Palisades Interstate Park Commission

This commission was organized to select and locate certain lands within specified limits as may be proper and necessary to be reserved for the purpose of establishing a state park, and to acquire, maintain and make available for use as a public park, lands so located. The commissioners are appointed by the governors of the states of New York and New Jersey.

Conservation Department

The division of lands and forests, and the division of inland waters of the conservation department are charged with the preservation and

protection of public lands, forests and inland waters not under the control of the United States government.

Bronx Parkway Commission

This commission consisting of three commissioners appointed by the governor by and with the advice and consent of the senate for a term of five years is empowered to examine, survey and acquire lands for the purpose of establishing a public park in the borough of the Bronx, New York City, and to prevent the pollution of the Bronx River. One-fourth of the expenses so incurred are paid by Westchester County and three-fourths by the city of New York.

Constitutional Restrictions on Executive Personnel

In organizing a works department one of the essential requirements is to provide for engineering talent. The position of state engineer is one which should be held by a highly trained, technical man who desires to make public service a career. The present constitution provides for the election of a state engineer for a term of two years, and further provides for some of the general duties of this officer. Arguments in support of making the state engineer elective have been numerous, but the weakness of such a provision is obvious to those familiar with the administration of public offices. Briefly some of the objections may be stated as follows:

1. It is impossible to correlate the different parts of the administration when the heads of some of the departments are made independent of the governor
2. It is impossible to obtain effective administration within a department and especially of a highly technical one like public works when the executive in charge of most of the construction work is likely to be changed every two years and in the meantime is subjected to the disrupting influences of past political promises and an approaching political campaign
3. It is difficult to secure candidates technically qualified for the highest engineering positions of the state who would be willing to undergo the irritation and uncertainty of a political campaign. Engineers of the quality needed for the office of state engineer are too much in demand in other places to submit to the annoyances and inconveniences of a campaign for votes and which offers nothing but small honor, smaller salary and a short tenure

4. The election of the state engineer, wholly independent of the governor, must of necessity relieve the governor from individual responsibility for the administration of the public works activities under the state engineer's supervision. Whatever related responsibility there is comes from the fact that the governor and the state engineer are usually of the same political party. Notwithstanding the fact that under the present organization the department of the state engineer is practically a separate autocratic government, the governor, through his appointive officials, is held responsible for working with what the state engineer provides. What has been accomplished in the past in coordinating the public works activities and engineering service of the state has been accomplished in spite of the constitution rather than on account of it

Legislative Restrictions on the Selection of Executive Personnel

Attention has already been called to the legislative restrictions in the selection of executive personnel. In the department of highways, the department of architecture, and in the conservation commission the chief executives are appointed for definite terms, all of which are longer than the two-year term of the governor, which means that certain governors have no appointive rights in three of the important departments of the state. This would not be so important if these functions were all brought into one works department and means were provided whereby the governor, as the chief executive of the state and directly responsible to the people for the administration of all of the state departments, could assign as vice-governor someone who would act as his direct representative in supervising the professional heads of these technical organizations. But, as at present organized, the state governmental machinery does not provide any agency whereby the governor may impress his official personality or his responsibility for the execution of state policies on the actions of what are regarded as his departments, except through the appointment of the departmental executives. Not having any means of enforcing discipline, he cannot insist on cooperation between these related agencies.

Constitutional Restrictions Which Prevent the Development of Efficient Organization and Management

Perhaps the most fundamental defect in the present public works machinery of the state government is the lack of coordination of duties and the consequent lack of cooperation in management of the various public works affairs. A most conspicuous example of this condition is

to be found in the relation of the state engineer and the superintendent of public works. The state engineer is given charge of the construction of the new barge canal and in the past he has usually been charged with all construction of the state's canal system, and most of the important maintenance and reconstruction work. The superintendent of public works, an appointee of the governor, is charged by the constitution with the operation and maintenance of these same waterways which the state engineer has constructed. Thus an appointee of the governor is responsible for operating and maintaining economically and efficiently a canal system handed bodily over to his department by the state engineer, over whom no one in the state administration has the slightest administrative control. This condition is incompatible with good management as is evidenced by the fact that it is not found in great privately owned and operated public service enterprises. If it were, it would mean that the operating department of a railroad would be required to accept anything that the purchasing agent or the maintenance department might hand it, in the way of rolling stock or motive power.

No Organization Available for Constructive Planning

With 15 boards, commissioners, officers and departments engaged in handling various parts of the public works problem of the state and with certain of these executives responsible to the governor, others elected by the people, others appointed by special boards, others ex-officio, etc., it is impossible to formulate any sort of a constructive public works program which will coordinate all of the engineering and general public service activities of the state. Whatever may be adopted as a principle of control, whether executive or legislative the present organization is inconsistent, and the various parts are misfits. Engineering problems cannot be solved quickly, and can never be solved effectively without careful preliminary planning. The only coordinating factor now to be found in the state organization is in the state engineer as an individual, due to the fact that he, as an individual, has been placed on most of the boards and commissions having to do with special problems. Since the abolition of the highways commission, however, there is no organic provision for cooperation of any nature between the highways department and the general engineering department of the state. There is no organic provision for cooperation between the department of architecture and the state engineer's department, although such cooperation would unquestionably increase the efficiency of the engineering service of the state architect's department. There is no organic provision for cooperative working relation between the state engineer's department and the department of public buildings, or the trustees of public buildings, and quite inadequate provisions for coordination of effort between the hydrographic and general surveying corps of the state engineer's department and the work of the conservation com-

mission, particularly as this latter is concerned with the conservation of water power.

It cannot be expected that either economical or efficient administration of the public works affairs will result where the heart of the public works organization of the state is wholly independent of every other organization engaged in related work. Best results can never be obtained until the services of the engineers of the state engineer's department are made available for use in every other department of the state government requiring engineering service. That such a coordination is not possible at the present time is an indictment of both the constitution and statute law of the state.

Continuity of Policy in Management Impossible

It has already been pointed out that the election of the state engineer makes it impossible to secure continuity of policy and program in the management of that department. This criticism is none the less true of the other departments and other public works agencies of the state, although due to other causes, the most important of which is that a clear distinction has not been made between the professional or technical heads of departments and bureaus, and administration appointments. It has been found that the establishment of a definite term of years extending over a period greater than the two-year term of the governor has been of practically no effect. Threatened "ripper" legislation has either forced resignations, or when carried out through providing for an apparent reorganization of the department, secured what seemed to be desirable in the way of political appointments. Every change in politics in Albany has been followed by an epidemic of "ripper" legislation and removals upon charges. The primary reason for much of this legislation and the unscrupulous way in which departments have been reorganized, broken up and readjusted, merely to make additional places for political appointments, is to be found in fundamental constitutional defects adverted to. The following list of highway commissioners is typical of changes in the executive personnel of these departments.

1898 Campbell W. Adams.
1899 Edward A. Bond.
1900 Edward A. Bond.
1901 Edward A. Bond.
1902 Edward A. Bond.
1903 Edward A. Bond.
1904 Henry A. Van Alstyne.
1905 Henry A. Van Alstyne.
1906 Henry A. Van Alstyne.
1907 Frederick Skene.

1908 Frederick Skene.
1909 Commission of 3 appointed by Governor Hughes.
1910 Commission of 3 appointed by Governor Hughes.
1911 Wm. H. Catlin, Oct. 19, 1911.
C. Gordon Reel, Superintendent of Highways.
1912 C. Gordon Reel, Superintendent of Highways.
1913 C. Gordon Reel,
J. H. Sturtevant, acting May, 1913.
J. H. Carlisle, Commissioner.
1914 J. H. Carlisle, Highway Commissioner.

What is need is an organization which will provide certain supervisory executive positions for administrative purposes and at the same time protect the professional and technical heads of the suborganization units in office.

Defects in Organization of the Architectural Service

In pointing to defects in the organization of the present department of architecture due consideration has been given to the fact that some agency must be provided for rendering architectural service to the various departments of the state government. The difficulty with the present architectural organization is that it is a highly centralized organization which without authority is useless and with authority will be in continual disagreement with the architects retained directly by the various departments of the state. Innumerable delays in the completion of the state's buildings may be charged directly to an almost continuous feeling of irritation between the state architect's department and the various institutions and other similar agencies of the state government.

The present department has assumed an executive relation to all work coming within its jurisdiction. It has not, on the other hand, done anything in the way of establishing group unit construction standards for various kinds of institutions. This is a kind of the work to be done by a form of organization adapted to it before ultimate economy in the construction of the various institutional buildings is to be obtained. It is not probable that with the present organization much attention will be given to the development of group unit construction standards. Such work is primarily concerned with the administration of the institution and naturally seems of greater importance to the executives in charge of the carrying on of the institutional work than to a department charged merely with designing and supervision of construction. The department of architecture as now organized was established to provide a central administrative agency for coordinating the various architectural needs of the state, with the expectation that the establishment of architectural standards would be its chief work, but the department of architecture

has given itself over almost entirely to the executive supervision of the building construction ordered by the various state departments.

Department of Buildings

One of the most conspicuous examples of the failure of ex-officio board administrations is to be found in the department of buildings. This department is ostensibly under the supervision of the governor, the lieutenant governor and the speaker of the assembly, who constitute the trustees of buildings. In immediate supervision of the force is a superintendent of buildings who, being responsible to an ex-officio board composed of elected officials having many other and more important duties, is in fact responsible to no one. The department of buildings is notoriously the stronghold of the most questionable kind of political administration. The condition of the public buildings in Albany over which the department has jurisdiction is indicative of its inefficiency. Unless something be done to establish executive responsibility for this very important work, little improvement can be expected and executive responsibility cannot be obtained by means of an ex-officio board.

Not a little of the delay experienced in handling the contracts for the repair and maintenance of the public buildings in Albany may be charged directly to the fact that the trustees of public buildings must sign all official papers in connection therewith. During the summer months the state architect has found it necessary to employ a special messenger to obtain the signatures of the members of the board to official papers.

Engineering Service in the Conservation Commission

There are two divisions in the Conservation Department which are engaged on work similar if not identical with that carried on by the state engineer of the department of public works, i. e., the division of inland waters and the division charged with the inspection of docks and dams. The personnel of these two divisions is made up of engineers and is concerned chiefly with the conservation of the water power of the state and the apportionment of water power and water supply to various cities, towns, villages and private corporations. The inspection of state dams not connected with the barge canal system is under the jurisdiction of this department. There are only two dams in this category and the inspection of these requires the services of several inspectors. In the department of public works and the state engineer's department at the present time there are more than one thousand employees engaged in the construction, maintenance and operation of the barge canal system, of which the construction and maintenance of dams and retaining walls is a very important factor. It would seem to be inevitable duplication of service to provide for special inspectors of other dams in the conservation

department where the engineering and supervision must either be duplicated or done without. The work of the engineering corps of the division of inland water parallels much of the work of the state engineer in the provision of adequate water supply for the barge canal. Moreover, the various services maintained by the state engineer through the hydrographic corps parallels much of the routine work of the engineering corps of the division of inland waters. Such a decentralization of the engineering supervision of the state's water sheds and water supply is obviously improper and one which prevents the securing of ultimate efficiency in the carrying on of the public works and engineering functions of the state.

PART III.—ORGANIZATION FOR ADMINISTRATION OF PUBLIC EDUCATION

Responsibility for the administration of the educational functions of the State of New York is laid upon the regents of the University of the State of New York by the constitution and legislation establishing them as a separate corporate entity. This body is composed of twelve members, each elected by the legislature for a term of twelve years, one regent being elected each year. Acting as a separate entity, the regents have the legislative direction of the department of education. This department is "charged with the general management and supervision of all public schools and all the educational work of the state, including the operations of the University of the State of New York."* The objects of the University of the State of New York, as described by law, are "to encourage and promote education, to visit and inspect its several institutions and departments, to distribute or expend or administer for them such property and funds as the state may appropriate therefor, or as the university may own or hold in trust or otherwise, and to perform such other duties as may be entrusted to it."†

Executive Functions of Department of Education.

The executive functions of the department are carried out by the commissioner of education, who is appointed by the board of regents to "serve during the pleasure of the board." This officer is also the president of the University of the State of New York—i. e., of the whole educational and regulative system that comes under the jurisdiction of the regents. With the approval of the regents the commissioner appoints assistant commissioners, directors and chiefs of divisions within the department.

Associated with him in the administration of this department are three assistant commissioners assigned respectively to "elementary" education, "secondary" education, and "higher" education. These

* See educational law, paragraph 20.
† See educational law, paragraph 40.

commissioners, while performing advisory functions to the commissioner and board, are also the heads of their respective activities of the department. Over collateral functions there are two directors, one of the state *library* and one of the state *science work and museum*. The details of this educational work are administered under thirteen chiefs of divisions in charge of, respectively, administration, attendance, educational extension, examination, history, inspections, law, library school, public records, school libraries, statistics, visual instruction and vocational schools.

Conditions Unfavorable to Localization and Enforcement of Responsibility

When viewed from the standpoint of establishing responsibility to the electorate and within the department there are several features of the present organization which deserve consideration.

Method of Selecting the Board of Regents

The existing provision that the members of the board of regents shall be chosen one each year by the state legislature makes impossible the enforcement of responsibility for board functions by appeal to the electorate, except as an issue is raised of sufficient importance to cause the electorate to enforce their will through many successive years of legislative action. That is, it is made difficult to get a definite issue before the legislature, or the people, unless such an issue is presented by the commissioner after a division in which the board fails to support him. This might work quite effectively if there were any way of impressing the will of a majority on the board except by making the issue a partisan measure which would be successful throughout a period of not less than six years, the period required to reconstitute the board so that a majority would represent the policy desired.

Experience has shown that of all methods for selecting public officers election by such a numerous body as the legislature and one whose membership represents local interests only, is the least successful in securing popular scrutiny and attracting state wide interest. Under such a system no one feels any responsibility at all. Whatever may be said in favor of legislative ratification, the desirability of locating responsibility for nomination is generally agreed to by educational authorities as well as administrative experts.

But assuming that it is thought desirable for historic or other reasons to retain the legislative appointment of the board of regents as a legislative, reviewing and approving body, then in this case the question may be raised whether the commissioner of education, as the head of the administration of the department, should not be appointed by the governor with an indefinite tenure, but removable at will, thereby putting the governor in a position to enforce responsiveness to public will, and making

him one of the governor's cabinet. This conclusion, of course, rests on the assumption that the constitution will provide for a responsible chief executive. If it does not there will be no cabinet, and it would not be wise to select the commissioner of education merely for central executive control.

Multiplicity of Lines of Control in the Department of Education

Considered as a separate corporation, there is within the department no well defined grouping of functions based on the principle of desirable correlation of working parts. There are at the present time eighteen heads of organization units, i. e., assistant commissioners, directors, and chiefs of divisions, who are theoretically responsible to the commissioner of education. A number of the organization units have double responsibility, that is, to the commissioner and to an assistant commissioner. For example, the attendance and medical inspection divisions are subject to orders from both the commissioner and the assistant commissioner in charge of elementary education. It would appear that as new functions have been undertaken from time to time, no attempt has been made to adjust them accurately to the work previously carried on.

While it is not easy to determine just how many deputy or assistant commissioners immediately responsible to the commissioner there should be, or to delimit exactly the field assigned to each, it is clear that efficient administration requires the drawing together of lines of control at the top. Some of the leading states in the Union have established five great divisions of work immediately under the supervision of the commissioner: one for elementary education, one for secondary education, one for higher education, one for vocational education, and one for research and statistics. Where this is done in a systematic manner, the subdivisions of work are grouped under the proper deputies according to functional relations. Experience would seem to show however that the organization of the department should not be too rigid, but that the commissioner of education should be allowed to assign to each of the deputy commissioners responsibility for such things as may seem to him to make for the efficiency of the whole department.

Lack of Centralization of Collateral Educational Functions

Turning to the broader principle of correlation of all educational functions under state control and especially those which are in whole or in part supported by the state, there are a number of institutions and activities of the state which are properly denominated as educational that are not subject to effective control by the department of education. These are administered by independent boards or commissioners

appointed according to varying methods which establish no responsibility anywhere. Such institutions and activities are as follows:

Agricultural colleges and schools
New York State Nautical School
Board of Geographic Names
Commission for the Blind
Instruction of children in the state institutions for the delinquent and dependent
Board of Law Examiners
Board of Embalming Examiners
State School for Ceramics and Clay Working—Alfred University

It would seem reasonable to assume that for the sake of efficient administration and control, all educational functions which are supported by public funds should be under the supervision of the Department of Education or at least be subject to the inspection of that Department. This is especially true in view of the provisions within the department to take care of these additional functions and activities.

Lack of Machinery for the Development of Work and Efficiency Programs

Where an executive officer, like the commissioner of education, is charged with such administrative responsibilities for activities, under his control, the absence of a free office staff for investigation, report, and the preparation of constructive programs cripples the efficiency of the head. The need for co-operation and advice which an executive of broad responsibility feels, can be supplied only when provision is made for an executive board on the one hand, made up of heads of branches of work, and for an independent staff on the other. The executive board advisers could be made most effective only by regrouping of functions under a few deputies or assistant commissions who in turn would be able to have reasonable freedom in the assignment of duties and a perspective of related experience gained through direction and contact within his department. The machinery for making investigations, analyzing departmental policies, and defining programs of work within the department might thus be at the commissioner's command and the consequent tendency to bring debatable questions to the chief executive would secure the combined and specialized talent of the staff as well as of line advisers.

Problems of State Educational Policy

In addition to the problems of central educational administration there are a number of questions which, though local in their character,

have a state-wide interest and deserve serious consideration at this time. Among these may be enumerated the following:

1. What is the best local administration unit for the school system
2. Shall textbooks and necessary school supplies be free
3. How is uniformity of regulation of the public school system to be promoted
4. What provision shall be made for a school sensus
5. How can facts about public education be made available in most useful form

The Unit for Local Administration of Public Education

The experience with the small unit of educational administration and the advantage gained in other states from the adoption of larger units suggest the desirability of abandoning the present policy of dividing the county into minor districts for educational purposes. The more important reasons for this change are to be found in the present inequalities in the burden of taxation and in the opportunities for education under the existing system of local administration. The attempt which the state makes through the apportionment of school funds to equalize the burden and the opportunity has not been successful, and probably never will succeed. Efficient administration and supervision of schools demands a larger unit of control. For instance if a county school board should be established it would make possible a quality of service on boards of education which is not now secured for the smaller school units. The present plan in New York state of dividing the county into districts, each of which is administered by a district superintendent, cannot secure adequate supervision.

It is thought by many that what is needed is the larger unit of administration with the provision for deputy superintendents, each of whom shall be a specialist along some particular line. In one county in Maryland at the present time there are two assistant superintendents who supervise rural schools, one supervisor of the upper grades of schools which have more than two teachers, one primary supervisor, one supervisor of manual training, and one supervisor of domestic art and domestic science. This is infinitely superior to a county divided into six divisions, each of which might be presided over by the district superintendent. The facts with respect to the present inequality of burden and of educational opportunity can be established by examining the rate of taxation, cost per pupil, and the like, for the smaller districts in New York state. County units of organization should exclude cities of five thousand or more population, employing a superintendent who devotes his full time to supervisory duties. The county organization would, of

course, make the county the unit for local taxation, and all state funds apportioned to the territory included in the county organization should be apportioned by the state to the county and reapportioned by the county in such manner as to secure equal educational opportunity. With the county organization once established, the consolidation of schools would be furthered, and the establishment of high schools could be undertaken with reference to this larger unit of administration.

Provisions for Free Text-books Throughout the State

The time has now arrived for a serious consideration of the question whether all text-books and necessary school supplies should be furnished free of charge by the county or city school districts. If this is decided in the affirmative, provision then should be made which will establish the right of the different county or city units of supervision to select their own books. If the principle of free text-books throughout the state be established, there will be a desire upon the part of some to establish uniformity throughout the state. This would be most unfortunate, since rural and city schools districts differ with respect to their needs, and must always be less efficient if the supervisory officers and teachers are not allowed to consider the problem of choosing or recommending to their local board texts which they feel they can use to best advantage.

The Codification of Laws for the Administration of Public Education in City School Districts

There is very great need for establishing uniform legislation with respect to the administration of public education in the cities of the state. Special legislation is demanded at every session of the legislature for some one city, ignoring in many cases, if not in most of them, principles which are well established with respect to educational administration. For example, in a recent session of the legislature the mayor of one city asked for a law abolishing the board of education and placing the schools under the control of the mayor's office.

Provisions for a Permanent and Continuing Census

These provisions are now to be found only in cities of the first class, and they should doubtless be extended to the whole state. Question may also be raised as to whether this should not be combined with other forms of canvass and census work, which may be used for purposes of legislation and administration concerning matters of health, labor, industry, etc.

Provision for More Adequate Record and Report of School Finances

The diversity of financial methods now employed in the state make any scientific study of comparative costs and methods well nigh impossible. A uniform system of accounting should be required, which would enable any properly qualified investigator to discover the cost of any part of the school system, or of any function performed by it. More adequate

records of pupils should also be required. A cumulative record for each pupil, giving the facts with regard to his name, birth, parentage, residence, days in school each year, scholarship, conduct, health, and the like, should be kept for each child during the entire school career. These records should be kept in duplicate, and should form the credentials provided by the school system when transfers are made from school system to school system, or when pupils are discharged to go to work. Such records are, of course, of very great advantage to the school system in which the child is registered in the study of their own problems of organization and administration.

PART IV.—ORGANIZATION FOR ADMINISTRATION OF STATE INSTITUTIONS FOR THE CARE OF DELINQUENTS, DEFECTIVES AND DEPENDENTS

In New York, as in the other American states, the state is assuming an increasing responsibility for the support and custodial care of delinquents, defectives and dependents. The delinquents have been provided for from the earliest times in state prisons and reformatories, but provision for defectives and dependents has been made, for the most part, until quite recently by the state incorporating private institutions managed by separate and independent boards composed of the incorporators or persons chosen by them. The state has frequently made appropriations to such institutions in order to relieve itself of the necessity of providing for the work which they were doing largely through the voluntary contributions of their members and supporters. This is especially true of institutions for the care and instruction of the deaf and dumb and the blind. Such institutions receiving public aid have been subjected to public supervision by the state board of charities. The work of all institutions providing for these wards of the state is brought under some measure of supervisory control and public accountability through the activities of a formidable array of boards, commissions and state officers, but for the efficient administration of most of them there is no direct responsibility assumed by the state, nor is the effort of the state looking to their efficient performance of a public service concentrated in any direct and responsible way in any single department of the state government.

The chief financial burden for the care of delinquents, defectives and dependents rests on the local government of the villages, towns, cities and counties. Partly on account of economic and social conditions, but chiefly for financial reasons, there is a growing tendency here, as elsewhere, for the state to assume an increasing share of this burden through the provision of state custodial care. Due to economic and social influences, dependency, and other individual needs requiring institutional care are no longer local, either as to cause or as a protective measure, consequently the state care has come to take the place of local care as in the case of the insane and more recently for increasing numbers of the feeble-minded.

This fact makes it all the more desirable that the state should set up a suitable and clearly-defined department of government for the exercise of functions assuming considerable magnitude.

Financial Support of State Institutions

For the fiscal year beginning October 1, 1914, the state appropriated for the 44 state institutions and the boards and commissions having to do with their administration or their supervision the sum of upwards of thirteen million dollars, of which over ten millions was for administration and maintenance. The total appropriation amounted to over 30 per cent. of the estimated revenue set aside for the general expenses of the state.

Large as these appropriations are, they were not sufficient to meet the demands of the institutions themselves nor the still larger demands from those who desire the state to meet more adequately the public needs as they see them for state service in this field.

Summary of Existing Organization and Exercise of State Authority.

Of the 44 state institutions, including two authorized but not yet in full operation, for whose management and support nearly one-third of the estimated revenues of the state was appropriated, eight are administered by the state superintendent of prisons, a constitutional officer, appointed by the governor, by and with the consent and advice of the senate, and the remaining 36 are administered under certain supervisory fiscal control by the fiscal supervisor by 36 separate boards of managers, one of 21 members (Juvenile Reformatory, Randall's Island), and one of 15 members (Industrial School at Industry, see ch. 121, Laws of 1915), and 34 of seven members each, appointed by the governor, who, with the comptroller and attorney-general, serves ex-officio on the board of the New York Reformatory at Randall's Island, and with the attorney-general, ex-officio, on the board of the State Soldiers and Sailors' Home.

Penal Institutions

Under the present grouping, for administrative purposes, the penal institutions comprise eight institutions, as follows:

Sing Sing Prison.
Auburn Prison.
State Prison for Women (Auburn).
State Farm for Women (Valatie).
Clinton Prison.
Great Meadow Prison.
Dannemora State Hospital for Insane Convicts.
Matteawan State Hospital for Insane Criminals.

State Superintendent of Prisons

This officer, provided in Article V., Section 4 of the constitution, is appointed for a term of five years. His duties as prescribed by the prison law include the superintendence, management and control of the state prisons and the convicts therein, and all matters relating to the government, discipline, police, contract, and fiscal concerns thereof. He appoints the agents, wardens, physicians and chaplains of the five state prisons. He has under his control six prisons, including the State Farm for Women, and the two Prison Hospitals at Dannemora and Matteawan for insane convicts and insane criminals.

State Commission of Prisons

This is a constitutional body, provided for in Article VIII., Section 11, established in 1895 (L. 1895, Chapter 1026, con't. L. 1907, Chapter 381, re-enacted L. 1909, Chapter 47) consisting of seven members, with powers of visitation and inspection of all institutions used for the detention of sane adults charged with or convicted of crime or detained as witnesses or debtors. Under Article III of the prison law this commission is directed to inspect all penal institutions throughout the state, recommend a system of employing inmates, arrange for the distribution of industries among penal institutions, prepare estimates annually of the articles which may be manufactured in penal institutions to meet the needs or requirements of the state or its political divisions, or purchases by institutions with state funds under the provisions of the state use system; also to make rules for the diversification of industries and the requisitions for supplies. The duties with respect to the industries of penal institutions are rather perfunctorily performed and their effect on the administration of the industries in the penal institutions is rather theoretical than actually controlling.

Commission on New Prisons

Created by act of the legislature in 1906 (L. 1906, Chapter 670) to select a new site for Sing Sing Prison and prepare plans for such additional accommodation as might be necessary to take care of prisoners now sent to Sing Sing. This commission is still in existence, although two sites have been purchased and considerable expense incurred by the commission without any satisfactory solution or any action of the commission looking to the relief of the congestion of Sing Sing. The commission, in a sense, serves for the penal institutions somewhat the same purpose as the commission on sites, grounds and buildings is supposed to exercise for the charitable institutions.

The State Board of Classification

This board consists of the fiscal supervisor, the superintendent of prisons, the state commission of prisons and the state hospital commis-

sion, all of whom are ex-officio and without additional compensation and act under authority of the prison law (Consolidated laws, chapter 43, paragraph 184), to fix and determine the prices at which all labor performed and articles manufactured in the charitable and penal institutions of the state shall be furnished to the state or political divisions thereof or to institutions, with certain exceptions. The board also classifies buildings, offices and institutions maintained or controlled by the state and fixes and determines styles, patterns and qualities of articles manufactured for the use of the same.

Board of Parole of State Prisons

Constituted by Article VII of the prison law, it is composed of three members, including the superintendent of prisons and two others, appointed by the governor by and with the advice and consent of the senate. The board meets monthly, except for two months of each year, at each of the prisons to pass upon applications for parole and it reports to the governor with its recommendations on all applications for pardon. It is charged with the duty of adopting a uniform system for determining the marks or credits which each prisoner must earn as a condition for release by parole.

Board of Examiners of Feeble-minded Criminals and Other Defectives

Provision was made in chapter 445 of the laws of 1912 for the appointment by the governor of a board of three members, a surgeon, a neurologist and a practitioner of medicine for a term of five years to examine into the mental and physical condition of the record and family history of feeble-minded, epileptic, criminal and other defective inmates confined in the several state hospitals for insane prisoners, reformatories and charitable and penal institutions, to perform such operations for the prevention of procreation as may be deemed advisable by the board. This board has never really functioned.

Prison Association of New York

This is a privately supported organization chartered by chapter 163 of the laws of 1846 and vested with power to visit, inspect and examine all the prisons in the state and to report annually to the legislature.

Charitable Institutions and Reformatories

Under this group, under the existing administrative classification, belong the following institutions:

a. Ten reformatories.
b. Five asylums for mentally deficient, including epileptics.
c. Two hospitals and one school for defectives.
d. Three institutions for dependents

The state authority is exercised over these institutions chiefly through two agencies and those, for the most part, inspectional in character, viz., the state board of charities and the fiscal supervisor of state charities. The latter officer, however, is exercising a progressively increasing control through his powers to allow or disallow expenditures, and the effect of his recommendations to the legislature upon their appropriations for the several institutions, all of which, however, are supposed to be directly managed by separate boards.

The State Board of Charities

This board was established in 1867 and created a constitutional body by Article VIII, section 11 of the constitution, and is composed of twelve members, one from each of the nine judicial districts and three additional members from the City of New York, appointed by the governor by and with the advice and consent of the senate for a term of eight years. The state charities law and the poor law (L. 1909, chapters 40, 46 and 57) enumerate in detail the powers and duties of the board, which are briefly to visit and inspect all institutions, whether state, county, municipal, incorporated or not incorporated, which are of a charitable, reformatory, eleemosynary or correctional character, and receive public aid,* except only those that are subject to the visitation and inspection of the state hospital commission and the state prison commission. The state board has a separate department of state and alien poor whose function is the supervision of institutions, with which they contract for the support of Indian, state and alien poor, audit the bills for the same, and supervise the removal of state and alien poor.

Fiscal Supervisor of State Charities

This is not a constitutional office, but provision is made for it in the state charities law providing for the appointment of the fiscal supervisor by the governor with the advice and consent of the senate. He is required to visit each institution of a charitable and reformatory character, to examine into all matters relating to the financial management, to appoint a competent person to examine the books, papers and accounts of institutions and to submit to the legislature an estimate of appropriations needed for maintenance and special purposes.

* This limitation of powers of inspection to institutions receiving public aid was apparently not intended by the Constitution nor the Charities Law but resulted from the decision of the Court of Appeals (April 17, 1900) in "The People of the State of New York *ex rel.* The State Board of Charities, Respondent, against The New York Society for the Prevention of Cruelty to Children, Appellant," and the intent of the Constitution should be made clear in the present revision to meet this decision.

Building Improvement Commission

Organized in 1910, under chapter 47 of the laws of 1910; consists of the governor, the president of the state board of charities, and the fiscal supervisor, with powers to approve or reject plans and specifications for the erection, alteration, repair or improvement of buildings or plants for any state institution reporting to the fiscal supervisor, except the New York State Reformatory at Elmira and the Eastern New York Reformatory at Napannoch.

Salary Classification Commission

Organized under laws of 1899, amended by chapter 215, laws of 1914, provides for a commission consisting of the comptroller, president of the state board of charities, and the fiscal supervisor, to classify into grades the officers and employees of the institutions reporting to the fiscal supervisor, and to recommend to the governor changes in salaries and wages as may seem proper. Such changes, however, require the written approval of the governor before becoming effective.

State Charities Aid Association

Incorporated May 22, 1880, by special act, chapter 323, laws of 1881, and under sections 30-32 of Article III of the charities law (Cons. L., chapter 55), it is vested with power to visit and inspect all charitable institutions and hospitals supported by the state, and to report thereon to the state board of charities. This is also a privately supported institution, which renders a service through publicity intended to affect the management of these institutions and the control which intelligent public opinion exercises in matters of this kind.

Commission on Sites, Grounds and Buildings

This commission, provided for by chapter 625 of the laws of 1913, consists of the fiscal supervisor, a member of the state board of charities, the state architect, a member of the conservation commission, the commissioner of agriculture, the chairman of the assembly ways and means committee, and the senate finance committee, with power to acquire by gift, purchase or condemnation, property for the laying out of grounds and to locate all buildings to be erected at all state institutions reporting to the fiscal supervisor. Action of the commission is final and subject to review only by the governor at a public hearing. This is an organization for the charitable institutions and reformatories somewhat analogous to the commission on new prisons for the needs of the penal institutions and is an equally foolish and wasteful method of fixing responsibility and securing economy in the planning for extension and new institutional equipment.

Joint Purchasing Committee

The charitable institutions and reformatories reporting to the state fiscal supervisor have also a joint purchasing committee (established by L. 1905, chapter 457, amended by L. 1915, chapter 662), the chairman of which is a superintendent of an institution, appointed for two years by the fiscal supervisor, two stewards, appointed by the chairman, and three superintendents elected at the annual meeting of the superintendents. The committee meets upon call of fiscal supervisor to make awards under joint contracts for the purchase of staple supplies. Members are paid their necessary traveling expenses in attending meetings, from a fund prorated and charged to maintenance accounts of all institutions. The second deputy fiscal supervisor acts as secretary.

State Hospitals for the Insane

There are 14 of these institutions which are really administered by separate boards of managers, but as a group with respect to the exercise of state authority, they occupy an intermediate position between the penal institutions including, however, two hospitals for the insane which exist for insane convicts and insane criminals, on the one hand, and the charitable institutions and reformatories on the other hand. The state hospitals for the insane are governed by local boards of managers with supervisory control of a state hospital commission which, while not possessing all the powers of control exercised by the state prison commission over the penal institutions, does, however, exercise a larger measure of control in addition to its powers of inspection than the state board of charities does over the charitable institutions and reformatories. A brief description of the public authorities or boards exercising supervisory powers over the state hospitals for the insane will be found in the discussion of the State Hospital Commission below and in that of the State Charities Aid Association, Board of Examiners of Feeble-minded Criminals and other defectives, Salary Classification Commission, Building Improvement Commission, and the State Board of Classification, all of which have been described above in the discussion of the charitable institutions.

State Hospital Commission

The commission organized as the state commission in lunacy (L. 1912, chapter 121), is a constitutional board of three members, appointed by the governor, by and with the consent of the senate, one of whom must be a physician and one an attorney and counsellor at law. The insanity law (chapter 27 of the consolidated laws) charges this commission with the execution of the laws relating to the custody, care and treatment of the insane, not including feeble-minded persons and epileptics as such, and idiots. The state hospital commission is a successor to and has all the powers granted by the constitution to the state commission in lunacy. It examines

all institutions, public and private, in which insane persons are kept, and may endeavor to secure legislation from congress to provide more effectually for the removal of alien and non-resident insane. It has general oversight of state hospitals and the control of all the property thereof, and shall see that the purposes of such hospitals are carried into effect by their respective boards of managers. It reports annually to the legislature and furnishes estimates of the amounts required for maintaining the state hospitals and presents the reasons for these estimates. There are 14 of these hospitals under the supervisory control of the commission and, in addition, a psychiatric institute which makes psychiatric and psychological investigations and gives instruction to the medical staffs of the several hospitals, also a retirement board of state hospital employees charged with the administration of a retirement fund established (L. 1912, chapter 59) to pay annuities to employees of state hospitals. The board designates employees for retirement and is composed of the chairman of the state hospital commission, a lay-member and the state comptroller.

There is also associated with the hospital commission a joint purchasing committee created by the commission from among its own employees, viz., three superintendents, two stewards and five other employees of the hospitals who act together in making up specifications and drawing contracts for the purchase of supplies. A similar joint purchasing committee acts with and under the direction of the state fiscal supervisor in the performance of similar duties for the state charitable institutions subject to his financial supervision.

State Supervisory Control Common to All Institutions

There are several state officers or state authorities who exercise a certain supervision and, in some senses, limit or control at least a part of the administrative work of all the charitable and penal institutions, including, of course, hospitals, reformatories, etc. The more significant illustrations of this are found in the offices of state comptroller and state architect.

The state comptroller, as a constitutional officer, is made the chief auditor by article V., section 1 of the constitution, and is also charged with the duty of appointing the clerk in each state prison. The comptroller audits accounts and claims against the state and keeps records of all transactions, and prepares budget estimates for presentation to the legislature, but exercises very little control over the state institutions.

The state architect, under the provisions of the public buildings law (Cons. L., chapter 44), and the insanity law (Cons. L., chapter 27, article III., section 65), prepares drawings and specifications and supervises the construction of all new buildings erected at state expense, and likewise all additions, alterations and improvements to existing buildings. He

prepares necessary forms of contracts to be approved by the attorney general, and his approval is required in some cases for minor construction work when done by special order.

General Characterization and Criticism of Existing Governmental Machinery

It is quite evident from the above summaries that the legislature has pursued a halting, variable and experimental policy in dealing with the problems of the scope and character of state authority and responsibility for its charitable and penal institutions. It has set up at least three lines of control primarily vested in the superintendent of prisons, the state hospital commission, and the fiscal supervisor for three arbitrary groups of institutions, in each case not clearly defined as to purpose and extent and not logically defined as to object. Three divisions in the exercise of state authority may be expedient and their classification justifiable, but the total lack of a co-ordinating agency through which problems common to all may be cleared and a stronger executive influence exerted is apparent to all. This is due to the absence of close working relationships between the three existing divisions of state authority.

The superintendent of prisons and the prison commission are not brought into sufficiently close working relations or made as a unit directly responsible and responsive to the control of the governor. The same may be said of the state hospital commission and the boards of managers of the fourteen state hospitals for the insane, including also the two hospitals for insane convicts and criminals now under the superintendent of prisons, all of which form another unit that could be organized under the president of the hospital commission and made more responsible and responsive to the governor. The state fiscal supervisor and the state board of charities might be organically related and made a third unit and in like manner made more responsible and responsive, through the president of the state board, to the governor.

In some such way, if the head of each of these three services were brought into close personal contact through one departmental head with the governor, the necessary co-ordination of activities and the consequent elimination of some friction, much duplication and unnecessary cost could be accomplished without any serious disturbance in the existing classification of this public institution which has seemed to work fairly well in this state. The suggestion of combining these services into one department was made in a bill considered in the last legislature, creating a board of regulation of state institutions, and this plan is quite in line with a general tendency in other states, many of which have already adopted state boards of control. The bill just mentioned, however, consolidates only two divisions of this service, comprising the state

hospitals, charitable institutions and reformatories and does not include the prisons, and yet this proposal aroused very vigorous and widespread opposition from those who fear a deterioration in this branch of public service and no economy or greater efficiency in administration from such consolidation.* The weight of evidence is, however, in favor of greater centralization in the management of these state institutions, provided local boards of management can be retained to perform subordinate functions and to hold and increase the popular interest and participation in the affairs of institutions which are organized to relieve distress and serve the unfortunate, but sometimes seem to furnish unusual opportunities for the selfish exploitation of those who are helpless to protest or defend themselves. It is precisely such institutions, however, which do make a strong sentimental appeal to the finer instincts of the people to share with the state the burdens of responsibility of caring for these unfortunate wards. There are, of course, strong arguments for the greatest amount of local autonomy in the management of these institutions, and considerable literature discussing the advantages and disadvantages of state boards of control has been published during the past fifteen or twenty years.† Specific criticism of the organization of the existing machinery is briefly summarized below.

Division of Authority

In the case of the penal institutions, there is the greatest concentration of authority in the hands of the state superintendent of prisons. His control is fiscal, actual and administrative. The institutions under his care have no separate, independent boards of managers, but along with supervision the state commission of prisons may and does affect in important particulars their administration. Their inspection and reports on conditions do not grow out of administrative experience and can perform no materially greater service of publicity as to conditions than similar work on the part of a private agency like the Prison Association might be expected to do. The boards of managers of reformatories seem to perform a useful service in bringing new ideas into the administration

* See Memorandum and Brief of State Charities Aid Association issued March 18, 1915, in opposition to Hinman-Sage bill creating a board of regulation of state institutions.

† See reports of the National Conference of Charities and Correction; numerous references to be found by consulting the general index; also "Methods of Fiscal Control of State Institutions," by Henry C. Wright, in a report of the State Charities Aid Association of New York, printed March, 1911; also Summary of Findings, Conclusions and Suggested Method of Supervising State Institutions, reprinted from Mr. Wright's report by State Charities Aid Association, March, 1911; also State Control and Supervision of Charities and Corrections, by Anderson W. Clark, University Studies, University of Nebraska, Volume V, No. 4, October, 1905; also Report on Charitable and Correctional Institutions, by James W. Garner, prepared for Illinois Economy and Efficiency Commission, 1914; also Report of Special Committee of the Board of Managers of Letchworth Village on the system of control of the state charitable and reformatory institutions, 1914.

of these institutions and connecting them up more directly with local and popular interest in their problems and their inmates, but no such boards exist for the prisons, neither does the superintendent of prisons stand, as he probably ought, as chief executive of a prison department with the prison commission acting in the capacity of an advisory council. The appointment by the state comptroller of the clerks in the prisons is intended to secure uniformity of bookkeeping and reporting, but represents another authority exercising some fiscal supervision and perhaps incidental control.

In the hospital division there is likewise a multiplicity of counselors and supervisors without sufficient co-ordination for general purposes between the state commission, the building improvement commission, boards of classification and the local boards, the functions of which could be better defined and exercised probably by concentrating all authority in the hospital commission and the local boards and defining more clearly their related and respective spheres of action.

In the charitable group, including the reformatories, which more logically belong with the penal institutions, there is still greater division of authority and consequent lack of responsibility and responsiveness. An elaborate system of checks and balances is found in the division and overlapping of powers and duties between the fiscal supervisor, the comptroller, the state board of charities, the building improvement commission, the commission on sites, grounds and buildings, the salary classification commission, and the local boards of the several institutions themselves. A strong state board with a fiscal supervisor if necessary as one of its executive officers could be properly related to the local boards with whatever demarcation between supervision and control the legislature deemed wise, and the result would make for simplicity, directness and responsiveness in organization.

Duplication of Inspection

Divided authority naturally leads to duplication of inspection, since publicity and supervision rather than direct administrative control constitute the larger purposes in the exercise of the state authority over its charitable and penal institutions.

In the prison group the prison commission, under Article III, section 46 of the prison law, has elaborate powers to visit and inspect all institutions used for detention of sane adults charged with or convicted of crime, or detained as witnesses or debtors, excepting such reformatories as are subject to visit and inspection by state board of charities. The powers and duties enumerated in the law with respect to this inspection include, among other things: (1) sanitary and health inspection; (2) building inspection, including plans for new construction; (3) statistical information; (4) employment of inmates.

The first is duplicated by the requirement of the public health law (1913) that the state health department inspect all state institutions. Its schedules for this work in the past have been quite detailed and elaborate, and have probably exceeded the limits of sanitary and health inspection to which they ought to be confined with perhaps the addition of necessary inspection of fire protection since the abolition of the state fire marshal's office. At the last session of the legislature the powers and duties of the state fire marshal, with respect to factories, were transferred to the labor department after the abolition of the office of the state fire marshal. In like manner inspection for safety and fire protection might be added to that for health and sanitation and made exclusive and mandatory in the state health department for the charitable and penal institutions.

The second, building inspection, is duplicated by special investigations of the superintendent of prisons, who has one confidential agent and details other employees for inspectional purposes as necessity arises, and may be duplicated by the state architect's office with respect to plans for new construction, and also by the commission on new prisons.

The third, statistical information, is duplicated by the relatively useless and inefficient bureau of criminal statistics and mining claims in the state department.

The fourth, with respect to the employment of inmates, duplicates what the superintendent of prisons can do better and usually does do for the commission.

Perhaps a concrete illustration of the unnecessary overlapping of inspectional functions will best illustrate this criticism. The best single illustration is found in the case of the Elmira and Napannoch reformatories which, under the present classification, belong with the charitable institutions and not with the penal group. These two reformatories happen to be under the management of a joint board known as the state board of managers of reformatories under a peculiar provision of the state charities law (paragraph 50) with full investigational powers. They are also put under detailed and overlapping investigation by the state fiscal supervisor, the state board of charities, and the state health department.

In the division of charitable institutions and reformatories, the duplication of inspection plainly results in unnecessary waste of effort, annoyance to institutions, and lack of thorough accomplishment of the aim of the state. It is one thing for the state to grant the right of entry and full powers of inspection to an outside, privately managed organization like the State Charities Aid Association, or the New York Prison Association, in order to insure, at the expense of private citizenship organizations, the widest publicity concerning the operations of these institutions about which baseless rumors always exist and in which there is

constant danger of maladministration. It is quite another thing to provide at state expense for mandatory inspection and supervision, in order to insure efficient and economic administration and to know that the law is obeyed and is adequate to accomplish the full purposes of state responsibility. The latter kind of inspection implies costly and well-organized, expert service, and there is no reason why it should be divided between many independent or badly co-ordinated departments or should work at cross purposes and operate to stifle and discourage initiative and enterprise on the part of the administrators of the law.

Inadequate Powers

The state board of charities has been restricted in the scope of its powers by the decision of the court of appeals (April 17, 1900) in the case of "The People of the State of New York *ex rel.* The State Board of Charities, Respondent, *vs.* The New York Society for the Prevention of Cruelty to Children, Appellant," the effect of which was to remove all the private charities not receiving public aid from its jurisdiction and put them beyond its inspectional powers.* Although the state makes appropriations to many private institutions, especially to those for the benefit of the deaf, dumb and blind, it still relies upon a great number of private institutions, to whose support it does not contribute, to perform a valuable service for its dependents, defectives and delinquents, for whom it otherwise would have to make provision. It was certainly the intention of the legislature to have public information as to how this work was being done, and the state board for several years rendered a valuable service in including them in their inspection of all institutions and the legislature voted adequate appropriations to enable the board to do this until the board was precluded from doing so by the effect of the decision to which reference has just been made. This raises a question whether the constitutional powers of the board should not be broadly defined to include the power and duty of inspection of all charitable institutions.

The fiscal supervisor is limited, according to opinions of the attorney general,† to the supervision of the fiscal officers and the physical condition of the grounds and buildings of the institutions reporting to him and has no supervisory powers in respect to policies, discipline or methods of said institutions. While the fiscal supervisor has exercised his fiscal powers at times in a way to amount to almost absolute control over all the affairs of the institutions according to competent critics,‡ his powers

*For full report of this decision and the questions involved, see "State Inspection of Private Charitable Institutions, Societies or Associations," by William R. Stewart, President of State Board of Charities, reprinted from "The Quarterly Record," June, 1900.

† See reports, attorney general, November 10 and 15, 1909.

‡ See H. C. Wright's report on State Charities Aid Association.

are not as clearly defined as they should be and, what is more important, they are not co-ordinated with those of the state board of charities, which would eliminate much duplication of inspection and bring the institutions, subject to both, under a simpler and more direct supervision, less liable to conflicting tendencies in the underlying premises and policies of its guiding or controlling influence.

Part V.—Organization for the Administration of Public Health Functions

General Description of Functions

In general the promotion of public health includes the following functions; the investigation, prevention and control of diseases dangerous to public health; the investigation of the sources of mortality and the registration, analysis and compilation of statistical data relative to births and deaths; the regulation and supervision of the manufacture, production, handling, storage and sale of foods and food products; the regulation of the sale of drugs; the supervision of water supplies and sewage disposal and sewage disposal plants; the prevention and abatement of nuisances, the dissemination of information for health protection and education; the manufacture and distribution by sale or otherwise of laboratory products for use in the prevention or treatment of diseases, and the furnishing of laboratory examinations or analysis as an aid to physicians or others in the protection of public health. In the very broad terms of the public health law, the problems of public health control matters having to do with the promotion of health and the security of life within the State.

Present Organization for Carrying on Health Functions

1. The State Department of Health has been recently reorganized, and is now effectively controlling the major part of the health functions of the State (see report on organization and functions, pages 132 to 143, inclusive). The head of the department is a commissioner, appointed by the Governor, by and with the advice and consent of the Senate, for a term of six years, and is required to appoint a deputy commissioner, who is subject to removal at the pleasure of the commissioner. The deputy commissioner, under the present organization, is in direct supervision of the work of the various divisions of the department.

Under the commissioner and directly responsible to him are the offices of the secretary of the department, who acts also as secretary to the public health council and the office of the executive clerk, who is charged with general office supervision, audit and clerical and stenographic work.

The public health council consists of the commissioner of health and

six members appointed by the governor for terms of six years each. At least three of the members of the council shall be physicians and one shall be a sanitary engineer. Its duties are to establish, and from time to time to amend, sanitary regulations (sanitary code) dealing with any matter affecting the security of life or health within the state and it may enact, and as required, amend by-laws in relation to its own procedure. The public health council is further empowered to prescribe by regulation the qualifications of the directors of the various divisions of the department, sanitary supervisors, public health nurses and local health officers who may be appointed under the recently amended public health law.

The consulting staff of physicians consists of four to six experts in public health work, who act as advisers or consultants to the commissioner in matters relating to their particular special fields. They are appointed by the commissioner as occasion requires and serve without compensation other than fees for services rendered and dependent upon the kind of service required.

The following functional divisions are established in the department of health, each division being in charge of a director:

a. The division of sanitary supervisors
b. The division of sanitary engineering
c. The division of laboratories
d. The division of communicable diseases
e. The division of vital statistics
f. Division of publicity and education
g. The division of child hygiene
h. The division of public health nursing
i. The division of cold storage inspection

2. State Department of Agriculture. Certain functions of the department of agriculture are obviously health functions. A brief description of the bureaus of the department of agriculture charged with these functions follows:

a. The bureau of dairy products (see report on organization and functions, pp. 303 to 307 inclusive, and chart GA, p. 298).
b. The bureau of veterinary service (see report on organization and functions, pp. 307 to 309 inclusive, and chart GA, p. 298).
c. The bureau of chemistry (see report on organization and functions, pp. 314-315, and chart GA, p. 298).

3. The state department of labor also carries on certain functions which are directly concerned with the promotion of health. The organi-

zation units of the department of labor which are charged with these health functions may be briefly described as follows:

a. The division of industrial hygiene of the bureau of inspections (see report on organization and functions, pp. 240-241, and chart EH, p. 228).

b. The division of industrial accidents and diseases of the bureau of statistics and information (see report on organization and functions, pp. 243-244, and chart EH, p. 228).

c. The division of homework inspection of the bureau of inspections is here considered as being concerned chiefly with the performance of a health function. The primary purpose of this division is to carry on investigations of hygiene and sanitation among workers engaged in work which is done for factories, but outside of such factories, that is, in the homes of the workers. The inspectors are required also to obtain information relative to the age of workers, the hours of employment and other facts of which the labor law takes cognizance (See report on organization and functions, p. 239, and chart EH, p. 228).

4. The state board of charities performs certain functions which have a very direct bearing upon the promotion of public health and which we believe may properly be considered from the standpoint of their health relations, rather than from that of their relation to the problems of poor relief.

a. The department of state and alien poor is charged with the inspection and supervision of all state institutions. This includes the inspection and supervision of the hospital for the treatment of incipient pulmonary tuberculosis at Ray Brook, the primary purpose of which is the prevention and control of tuberculosis—a health function (see report on organization and functions, pp. 414-415 inclusive, and chart IA, p. 406).

b. The department of inspection makes inspections of all charitable organizations and institutions under private control that receive public funds, and makes special investigations of state hospitals, charitable and reformatory institutions throughout the state. It also makes investigations of other hospitals, dispensaries, and private, municipal and county institutions within the state. In so far as the inspections and investigations of this department of the state board of charities relates to private

hospitals and dispensaries and municipal and county hospitals, the problem is one of health control rather than of charities (see report on organization and functions, pp. 415-416 inclusive, and chart IA, p. 406).

5. Certain regulative functions now performed by the state through independent and uncorrelated organization units are here considered as health functions, not because the work performed by them is primarily for the promotion of public health, but because of the desirability from an administrative point of view of correlating them under one administrative head, and because they are perhaps more closely allied to functions of health and safety promotion than to any other.

a. The superintendent of weights and measures is appointed by the governor by and with the advice and consent of the senate for a term of five years (for organization of this office, see report on organization and functions, p. 283 and chart EN, p. 282).

The superintendent of weights and measures is charged with the custody of the standards of weights and measures of the state; correction by comparison with state standards of city and county standards as often as once in five years; the testing at least once annually of all scales, weights and measures in every institution under the jurisdiction of the fiscal supervisor of state charities; the inspection at least once in two years of all standards used by counties or cities, and the maintenance of a record of the same; the establishment of uniform tolerances of reasonable variation; the certification to the attorney-general of the facts concerning intentional violations of the law.

b. The state racing commission is composed of three members appointed by the governor for a term of five years. They have jurisdiction over all racing or steeplechase corporations or association in the state, issue licenses to conduct racing meetings; see that all such races are conducted according to the rules and regulations prescribed by law, and that five per cent. of all gross receipts of such racing meetings is paid to the state comptroller. (See report on organization and functions, p. 286, and chart EN, p. 282).

3. The New York state athletic commission is composed of three members appointed by the governor for a term of five years. Two are required to reside within the first and second judicial districts. The commission has direct

management and jurisdiction over all boxing and sparring matches and exhibitions. They may issue and revoke all licenses and must see that five per cent. of the gross receipts from all licensed matches is paid to the comptroller (see report on organization and functions, p. 286 and chart EN, p. 282).

d. The harbormasters are three in number and are appointed by the governor to regulate and station steamboats and other vessels navigating the Hudson River, north of the city of New York, and determine how far and in what instances masters or other persons having charge of steamboats or vessels shall accommodate each other in their respective anchorages (see report on organization and functions, p. 284 and chart EN, p. 283).

e. The state board of port wardens consists of nine port wardens who are appointed by the governor for terms of three years each, and one special port warden similarly appointed for a term of two years. The duties of the port wardens are to board vessels for the purpose of examining the condition and storage of cargo, and in case of damage to vessel or cargo, to ascertain the cause and extent of such damage. They are exclusive surveyors of vessels which have suffered wreck or which shall be deemed unfit to proceed to sea and are required to appraise the damage and determine the repairs necessary to render the vessel seaworthy and to estimate value or measurement of vessels or cargo in cases of dispute. They examine all applicants for positions as Hell Gate pilots, recommend appointments, and make all rates and regulations for the branch of pilot service (see report on organization and functions, p. 285 and chart EN, p. 283).

Criticism.

Lack of Correlation of Health Functions

Although the state department of health has recently been reorganized and has adopted a sanitary code which prescribes the regulations under which the various health functions of the state shall be performed, lack of correlation of these health functions prevents the properly responsible body—that is, the state department of health—from exercising adequate supervision over the actual performance of these functions.

1. Complete and adequate regulations have been prescribed for the protection of the food supply, including milk, but the actual supervision

of the food supply through inspection and analysis of foods is still largely within the jurisdiction of the department of agriculture in its bureau of dairy products and bureau of veterinary service. The primary object of the regulation of the milk supply, for example, is not the promotion of the milk-producing industry nor the protection of the producer, but rather the protection of the public against diseases which are transmissible through milk and the prevention of contamination of milk by dirt or other adulterants. This is essentially a health measure. Similarly, the inspection of cattle by the veterinarians of the department of agriculture is not for the purpose of seeing that the owners of the state are protected against loss of their animals from disease, but to prevent the spread of those diseases to man through the consumption of the flesh of disease-contaminated animals slaughtered for food, or directly from living animals to man. The majority of the diseases of domestic animals are transmitted to man in one of these three ways, and the elimination of animal diseases is therefore of primary importance in the promotion of public health.

2. As previously shown the department of labor maintains a division of industrial hygiene, which conducts investigations of industrial processes with a view to the prevention of industrial diseases, and also a division of industrial accidents and diseases, which is charged with the collection, tabulation and compilation of statistical and other material regarding poisonings from lead, phosphorus, arsenic, brass, wood alcohol, mercury or their compounds, or from anthrax, or compressed air illness, contracted as the result of the nature of the patient's employment (Sec. 65 of Art. 5, Labor Law). The law requires physicians to report all such cases to the commissioner of labor and prescribes the information to be furnished by physicians. It is evident that the success of registration and prevention of industrial diseases depends, in large measure, upon the co-operation of private physicians who are called upon to treat cases of industrial disease, and such co-operation is much more easily secured by the state department of health, which is in daily contact with the physicians of the state. Research and laboratory investigations, which may be carried on with reference to these diseases, require medical expertness in the highest degree. The state department of health already has a staff of experts in both field and laboratory research and investigation.

The prevention of industrial diseases and the promotion of industrial hygiene is not exclusively a labor problem, but rather part of the general problem of the promotion of public health. Tuberculosis, for example, is so prevalent among workers in certain trades that it has come to be regarded, in certain of its forms, as an industrial disease, but the prevention of tuberculosis in all its forms is one of the state's great health

problems, which to be effectively dealt with must be considered in its relation to other communicable diseases, the food supply, including milk, general sanitation and hygiene, and all other matters which pertain to public health.

3. The inspection and supervision of the conditions under which workers are employed in their homes, which service is now rendered by the division of homework inspection of the department of labor is intended as a health measure. In our larger cities considerable work is done for factories in the homes of employees and much of this work is done by children. The most fertile field for the promotion of public health is that of prevention of diseases and mortality among children. Conditions which might have little or no effect upon adults quite often result in serious impairment of the health of children. The correlation of all existing activities designed to promote child health is therefore very desirable.

4. Up to the present time supervision of private, municipal and county hospitals and dispensaries throughout the state, as well as the supervision of the state hospital for the treatment of incipient pulmonary tuberculosis, has been in the hands of the state board of charities. Here again the object of such supervision is primarily that of promoting public health and not of providing relief for the indigent. For the best supervision of such activities, it is essential that that department, which is charged with the prevention of disease, should be also responsible for the measures necessary to provide proper treatment.

5. The various regulative organization units previously described, namely, the state superintendent of weights and measures, the state racing commission, the state athletic commission, the harbor masters and the board of port wardens now act entirely independently. Each is responsible directly to the governor, whose supervision of these organization units must, of necessity, be only a nominal one, and is based almost wholly upon the reports which are submitted to him by the heads of these various bodies. The result of such supervision has in certain instances been detrimental to the public welfare as well as unnecessarily costly.

a. The office of the superintendent of weights and measures, which performs a purely regulative function, has up to this time been considered as a separate and distinct unit, not allied in any way with other regulative functions of the government. To a certain extent this is true, but it is also true that the office of the superintendent of weights and measures is more closely allied to those functions which are promotive of the public health than to any other functional grouping. The regulation of matters relating to weights and measures is very closely

concerned with the question of control of the food supply, which is a primary health function. The inspection of weights and measures throughout the state may, by close correlation with the food inspection service, be made to render signal service in the protection of goods against adulteration or misbranding. It is therefore suggested that the service now rendered by the office of the state superintendent of weights and measures should be considered in its relation to the state's plan for the promotion of public health and should be placed under the same supervision as other functions in health control.

b. The state racing commission and the state athletic commission are very similar in purpose. They are both created for the purpose of regulating recreational activities, which it is assumed the citizens of the state demand and which must be properly supervised, in order to prevent the exploitation of the public to its disadvantage. The functions of both these commissions are perhaps more closely allied to those functions which have been grouped as promotive of public health than to any other grouping of functions. For the sake of improved administrative control, these two commissions have been included among the functions herewith, considered as promotive of public health.

c. Two other organization units, namely, the harbor masters and the board of port wardens, are created primarily for regulating and insuring the safety of navigation. The report on the board of port wardens indicates very clearly that there is need for better supervision of this work. The correlation of the functions now performed by the harbor masters and port wardens, under the single head responsible for the promotion of public health activities, would do away with many of the defects of the present organization. It is therefore suggested that these functions be also included in the grouping herein described of functions for the promotion of public health.

Need for Closer Relation of Legislative Council to Executives

The present organization plan of the state department of health under a single executive responsible directly to the governor and assisted by an expert legislative staff, namely, the public health council, is well calculated to secure best results in public health administration. The difficulty which now exists in the enforcement of the sanitary code, which has been drawn up by the public health council, is the result of the

division of health functions among several departments of the state. It is essential in carrying out thoroughly a plan for the promotion of public health that the body which makes regulations shall be an integral part, or at least very closely allied with the organization charged with the enforcement of these regulations. Regulations may need modifications or amendment in order that the peculiar conditions found by supervisors or inspectors in the various fields of health service may be met, and the closer the contact and cooperation of the legislative council with the executive officers, the easier it is for the council to fit its regulations to the conditions in the field.

Economy Through Better Organization

The lack of correlation of functions promotive of public health means, of course, increased cost for overhead, as well as special service. Each division of work, whether it be under the control of the department of health, the department of agriculture, the department of labor or other organization unit of the state government, requires its own directing officers or staff, its own clerical and stenographic force, its special inspectors and its special reports. The consolidation of many of these functions, now so widely separated, would inevitably reduce the amount of supervision needed, the clerical and stenographic force required and the cost of reporting results. Cooperation in the working out of a comprehensive inspectional plan would mean fewer inspectors and lower cost.

Indeterminate Tenure of Office Desirable

The commissioner of health is appointed for a term of six years. This means that every third governor has the appointment of a commissioner of health. While it is desirable that the term of the commissioner of health should be more than two years, it is very undesirable that the governor, who may be held accountable for the acts of his subordinates, should not be always responsible for the selection of those subordinates. He should not find it difficult to remove them when they fail to carry out the policies upon the basis of which his administration has been supported by the people. It is important, also, in carrying out any program for the promotion of public health that the offices responsible for the conception of the plan, the organization of the force, and the performance of the work shall be continued in office long enough to work out his program. Six years is not long enough, and it has been the experience of public health workers that a long term of office of the commissioner of health or health officer almost invariably results in progressive efficiency of health service. If power of removal is freely given the appointing officer, that officer must, of necessity, exercise such power wisely, for in removing a competent subordinate he is certain that the public will review

his act to his own disadvantage. Such a plan of indeterminate tenure of office, limited only by the power of the appointing officers to remove the incumbent at his discretion, will result inevitably in the continuance in authority of an efficient commissioner, and the prompt removal of an inefficient one by the governor.

Part VI.—Organization for the Administration of State Activities Having to do with Industrial Relations

There are peculiar difficulties in any attempt to appraise the existing governmental machinery for dealing with industrial relations in New York state. The legislature has just passed a comprehensive statute completely reorganizing the state labor department and combining with it the workmen's compensation commission, thus constituting an industrial commission with new and extensive powers. If the new commission is thoroughly and efficiently organized along the lines projected and implied in the Spring Bill, which has just received (May 22, 1915) the governor's approval, the grounds for many of the criticisms and suggestions contained in this chapter will doubtless be removed. The comments herein are based, however, on the existing order before the industrial commission comes into being. That order corresponds to the description to be found on pages 229-247, 269-277, and elsewhere, in the survey of organization and functions reported by the New York bureau of municipal research and the New York state department of efficiency and economy, January 1, 1915.

Scope of State Function of Regulation of Industrial Relations

New York heads the list of states both in the number of its industrial establishments and in the number of its industrial workers. The United States Census Bureau in 1909 enumerated 44,935 manufacturing establishments and 1,003,961 as the average number of wage earners in those establishments for the state of New York as compared with Pennsylvania, the second state in order of importance in this matter with 27,563 establishments and 877,543 wage earners. The relatively large number of small establishments in New York is the significant fact indicated by these figures and complicating the question of state regulation. The reports of the New York state department of labor showed an even greater task accomplished in that, its division of factory inspection alone, in September, 1914, covered 51,118 manufacturing establishments and 1,364,070 employees, of whom 88,022 were office employees.

These figures do not cover the persons affected by the division of mercantile inspection, the division of inspection of mines, tunnels, etc., and the division of home work inspection. No adequate figures are available to show how many persons are affected by the labor law enforced by these divisions of the inspection bureau of the department of

labor. Nor do they include, of course, the persons affected by the work of the employment bureau, the mediation and arbitration bureau and the industrial and immigration bureau of that department, and by the workmen's compensation commission and by the public service commissions in their jurisdiction over employees on steam railroads, trolley lines, surface and underground railways, nor by the payment of wages provisions of the labor law also enforced by the department of labor.

Since the preservation of order and the protection of property have always been regarded as primary duties of government it might be supposed that both historically and quantitatively the concern of the state would find its chief expression in dealing with strikes and industrial disputes. This is, however, not exactly the fact. A large mass of the legislation from the earliest time has set up standards and attempted to enforce them with respect to the health, safety and morals of employees and the sanitary condition of the places in which they work. A recent amendment to the state constitution (article 1, section 19) says "nothing contained in this constitution shall be construed to limit the power of the legislature to enact laws for the protection of the lives, health or safety of employees." And even in the absence of express authority, the legislature under the exercise of the police power has been sustained in the enactments of a wide range of provisions that extend widely the constitutional power just mentioned. The scope of the state functions therefore may be said to include at least the following matters:

1. The contractual relations of employers and employees
2. The safety and sanitary character of factories, workshops and conditions of work
3. Hours of labor, provision for rest periods and meal hours, with more stringent regulation and stricter supervision of those for women and children
4. The age, physical and educational qualifications of children who engage in industry
5. Machinery for securing compensation for industrial accidents and their prevention
6. Machinery for mediation, arbitration and investigation of industrial disputes
7. Machinery for the equitable adjustment and local application of the general principles of the labor law, as well as the supplementing and amplifying of its mandatory provisions
8. The protection of the rights of aliens and immigrant laborers

Existing State Organization

The labor department is a large and, within recent years, a strongly centralized department of the government. It has a staff of 391 em-

ployees costing in salaries alone nearly $600,000 per annum. The recently organized workmen's compensation commission, which has been in operation less than a year, has an additional staff nearly as large, comprising 337 persons at an annual salary cost of over $500,000. The additional cost of these two departments, over and above the salary cost, will amount to another half million dollars per annum. Yet neither of these departments, and least of all the labor department, is able to perform the work contemplated in the laws it is called upon to enforce, notwithstanding also the fact that the health department and the public service commissions are expected to supplement this service though at present the actual work they do in connection with matters pertaining to industrial relations from the point of view of protecting the interests and welfare of employees probably does not bulk large enough to add much to their respective annual budgets, nor to the cost to the state for the performance of this function.

The Industrial Board

Organized May 16, 1913, with the commissioner of labor as its chairman, and four associate members appointed by the governor and confirmed by the senate, this board has broad discretionary powers and authority to make rules and regulations applicable to varying conditions of industry. It may determine what specific measures or methods are necessary to fulfill the requirements of the labor law, but may not pass rules or regulations inconsistent with any statute or mandatory provision of the law. It may, however, require additional safeguards as to construction, equipment and maintenance of factory buildings, in order to carry out the purposes of the law. It has power to regulate sanitary arrangements even in labor camps furnished by factory owner, directly or indirectly, for housing workers employed in any factory. It may establish a sanitary code for bakeries and confectioneries except in cities of the first class and make regulations for health and safety of workers in mines, tunnels and quarries. In many of these respects it exercises powers duplicated by the health authorities. It may exempt from or modify the provisions of the one day of rest in seven law (section 8a of the labor law) in cases of emergency, and for brief periods (June 25 to August 5) it may permit females eighteen years of age and upwards employed in canning establishments to work 66 hours per week instead of 60, and also modify specified fire and safety provisions that otherwise are mandatory. Its powers to make variations subject to public hearings and record are not, however, sufficiently broad to meet the needs of so complicated a situation as that created by the rigid state-wide mandatory provisions of many parts of the labor law.

In New York City, for example, it is said that there are 22 independent public agencies empowered to inspect buildings for industrial

purposes, and concurrent approval of many of them is necessary before any structural changes can be made, which leads to unnecessary expense and annoyance to owners and occupiers, as well as causes useless expense to the state. The industrial board does not have the sole and complete power to establish finally and fully the standards of protection required in buildings where workers are employed, even if other agencies were allowed to inspect or required to co-operate in the enforcement of these standards.

The commissioner of labor has still power to issue orders approving safety devices and for other matters at his own discretion, independently of the board of which he is chairman and whose rules and regulations he must enforce, and this fact has given rise to some conflict and confusion.

The board has no staff agencies of its own, but must make the investigations upon which its quasi legislative and judicial powers are based with the aid of such persons as the commissioner of labor is willing to detail to the service of the board. A better concentration and simplification of powers could be brought about by not delegating to so many other bodies duties with respect to safety, fire protection and health of employees, at least in cases where the necessary standard might be better determined on the basis of a broader knowledge of the facts of industry by the more highly specialized industrial board.

Mercantile Establishments

One division of the inspection bureau of the department of labor deals with mercantile establishments and is in charge of a chief mercantile inspector at a salary of $4,000, with 26 employees whose salaries aggregate $30,720. Another division of the same bureau has charge of home-work inspection, with a chief at $3,000 and 17 employees at a total annual salary cost of $21,000. Neither of these divisions is equipped to do more than a fraction of the work imposed upon it by the law if even the minimum standards of factory inspection are to be applied to mercantile establishments and to home work. The mercantile law dates from 1897 and resulted from the investigations of the Reinhart Committee; it prescribed much lower standards for mercantile establishments than for factories with respect to the hours of work for children under 16 and girls under 21, with exceptions for the holiday season—at first to include ten days before Christmas, but since then reduced to seven days. For women over 21 years of age no protection was afforded. In 1897 the enforcement was put in the hands of local boards of health who made no attempts to do anything about it and, in many towns, made inspections only on complaint. The New York City board of health had a special corps of mercantile inspectors for only about eight months, and afterward turned this work over to the regular sanitary inspectors as a part of their other duties. They were not trained to enforce a labor

law, and the women and children in stores did not secure the protection the law intended. In 1908 the legislature passed laws giving the enforcement of the mercantile law in cities of the first class to the labor commissioner, who organized a separate bureau in charge of a mercantile inspector and eight deputies, later increased to nine. Even with this small force, inspection during the next four years revealed widespread non-compliance with the law. Thousands of children were found illegally employed, but with even a few inspectors to cover the three largest cities of the state, the labor commissioner secured considerable improvement. The factory investigating commission in 1913 found the conditions outside of cities of the first class so unsatisfactory that upon its recommendation the legislature subsequently took away the jurisdiction of the local boards of health over mercantile establishments in second-class cities, and added it to that of the labor department. In 1914 the mercantile inspection division of the labor department, then covering cities of the first and second class, made 27,116 inspections, and estimated that these inspections represented roughly on the average about 18 persons affected by the law, covered by each inspection. They also took up in addition 913 inspections on complaint. How inadequate this inspection is may be seen from the fact that there are doubtless a hundred thousand mercantile establishments in New York City alone, and many aspects of the mercantile law apply to bowling alleys and places of amusement, with which the department can only deal on complaint, unless it is furnished with a very large staff of inspectors. It is difficult to say how far the department has proven itself efficient in developing ingenious plans of so-called "sample inspections" in selected areas, which, if followed by vigorous prosecution, might serve to strike terror in the ranks of the violators of the law. Such a plan would depend, of course, for its success upon the magistrates and courts backing up the department and punishing violations with prompt and severe sentences, and this they have not done. On the contrary, the department has been greatly hampered, not merely by the legislature failing to supply adequate appropriations for enough inspectors, but by the indifference and lack of support of the magistrates and courts.

Home Work

The operations of the division for the inspection of home work have been even less satisfactory, from the point of view of any guarantee that the purposes of the law are being accomplished. The report of the commissioner of labor for 1913 gives an account of the work of this division, as far as the regulation of work done in tenement houses in Greater New York goes. There were outstanding on October 1, 1913, 11,183 licenses; during the previous year, 1,587 licenses were cancelled, and 198 revoked for sanitary causes. There does not seem to be the

necessary co-operation with the health authorities, inasmuch as this inspection of tenement houses has to do primarily with sanitary conditions. If home-work inspection could be added to the work of the ordinary sanitary inspector, this division of the bureau in the labor department with its meagre force might be used as a flying squadron or detective bureau to supplement work which is more properly part of the duty of regular health inspection, and might eventually be left almost entirely to the health department.

The other aspect of home-work inspection which results in the detection of children who are truants from school should in like manner lead to better co-operation with the bureau of school attendance and the ultimate reliance upon the school authorities for this work without any necessity for the assistance of the labor department.

Workmen's Compensation

Where the state has assumed responsibility for the administration of a system of workmen's compensation, there exists not only the need for an administrative organization to enforce the law, but especially one that will work to prevent expense and reduce the cost of compensation to employers, as well as minimize the burdens which injured workmen must bear for which no compensation can be made. Many states, like New York, have created a separate commission or board for this purpose. In some states the commissions have purely supervisory powers and exist largely for the collection of information while the courts enforce the law. In other states, the commissions are quasi-judicial bodies and adjudicate claims.

The New York Workmen's Compensation Commission was appointed in March, 1914, and held its first meeting on March 30th. The compulsory features of the statute became effective July 1, 1914, so that the commission had but three months in which to prepare for a complex system of insurance, for which there was little experience and precedent. The business to be handled administratively comprised the industrial hazard in the greatest industrial state in the union, the annual payroll of whose workers aggregated $1,000,000,000, distributed in 180,000 employing industries and covering 2,000,000 workmen.

The law required the main office of the commission to be located at Albany, where inadequate space was obtainable. The preliminary survey indicated that three-fourths of the business of the commission would have to be done with employers and employees located within Greater New York. Therefore, a branch office of large proportions was necessarily established in this city, and has remained the principal branch office of the commission.

It was found necessary to divide the work of the commission into bureaus having to do with claims, with accounts, with the state insurance

funds and other subjects. The state was divided into nine districts and deputies located in charge of each at the following points: Buffalo, Rochester, Syracuse, Albany, aside from the main office, Poughkeepsie, The Bronx, Brooklyn, and one each in central and lower New York City districts. One additional deputy was appointed, but not assigned, and on January 1, 1915, an additional deputy was appointed and assigned to the main office, thus making 11 in all. These serve as representatives of the commission in the different sections of the state to explain the provisions of the law, to exercise delegated judicial functions and to expedite the handling of claims through advice and through the direction of the investigators in each district office. There was attached a hearing stenographer, an interpreting clerk, a stenographic-filing clerk, a representative of the state insurance fund and a junior clerk or page, whose salaries, together with that of the deputy and the rent of the office aggregate about $10,000 per year. Work increased in some offices to an extent that required the appointment of an assistant deputy, and five such assistant deputies were placed where most needed. Thirteen hundred cases have been referred to deputies for investigation and hearing prior to February 1, 1915, the end of the period reviewed in the first annual report covering ten months of the existence of the commission. The organization of the commission is described and charted on page 269 ff. of the organization and functions report.

The commission hears claims at Albany one day a week; at Syracuse, Rochester and Buffalo one day every other week, and at the New York branch office every day excepting Saturday.

Deputy commissioners have heard and disposed of many calendars, thus relieving the commission for the consideration of the more difficult cases, but their findings are not binding and effective until approved by the commission itself.

The arbitration feature of the law is a dead letter and was invoked in only one case. There is, however, an element of arbitration in the public hearings.

The medical division is closely related to the claims division and consists of three physicians, one of whom is medical adviser to the state insurance fund, the other two confining their work to claims to be paid by other insurance carriers. The division has a surgical staff for examination of claims, which is done at the request of the claimants or on motion of the commission or at the request of the claims department, and is the best agency for determining the nature and extent of disability. The division also examines reports of attending physicians and passes on fee bills of attending physicians. One result of the compensation laws has been the installation by employers of first aid equipment at trifling cost. Probably 70 per cent. of all accidents are preventable.

In the New York office over 2,000 physical examinations of claimants have been made, and claim papers have been examined for diagnosis and time of disability to the number of 3,010.

The legal bureau has had 79 cases on appeal in the Appellate Division of the Supreme Court; 95 cases in which complaints were made that employer failed to provide compensation insurance; 227 cases in which awards had been made and manufacturer had no insurance; and cases were referred to legal department for collection of award; 49 cases against railroad companies involving questions of the law of interstate commerce; 207 miscellaneous claims referred for opinion.

The commission reports that the State Insurance Fund is operating satisfactorily, and the commission hopes that no legislation will be enacted to hinder the extension of the State Insurance Fund, which, notwithstanding its inability to command solicitors and the usual instruments of business acquisition, has done more business than any other insurance carrier except one.

The actuarial bureau has work wholly connected with the work of the State Insurance Fund, and the statistical bureau analyzes claims to discover causes of accidents and analyzes costs.

Duplication of Inspection and of Work

Inasmuch as the adequacy of enforcement of most of the labor law depends entirely on the completeness and efficiency of regular systematic inspection by disinterested and well-trained officials, the charge of duplication is all the more serious. Already there is ample ground for this charge to be found in an analysis of the work of the factory inspection bureau, and the inspection department of the Workmen's Compensation Commission. And this duplication will become more serious as the inspection department of the Workmen's Compensation Commission becomes better organized. The administrative problems in the enforcement of many of the general provisions of the labor law and those of the compensation law are identical. They have a common purpose also in seeking to bring about prevention as their major task, rather than merely the detection of crime or violations. There is also duplication of work in the reporting of accidents and certain statistical information which it is necessary to ask employers to furnish the authorities who administer the general labor laws and those who are dealing with the matter of compensation for industrial accident. Where separate authorities have been set up in other states the desire for the elimination of the duplication referred to has led to a consolidation of the inspectional work of those departments. A recent report of a legislative committee in Missouri (December, 1914), recommending the enactment of a compensation law also suggested the creation of an industrial commission to administer it and the other labor laws of the state jointly. Among other things, the

committee says: "With the enactment of a workman's compensation law comes a duty to provide the machinery for reducing as far as possible the number of industrial accidents and correspondingly reducing their hardships to employees and their cost to employers. For some time there has been the feeling that in equipping their plants employers had been paying too little attention to accident prevention, and it is only within the last few years that special study and inventive genius has been devoted to this field * * * The body fitted to prescribe safety rules and regulations is the body which, through factory inspection and daily hearings of accident cases, would know from actual experience what is reasonable and proper."*

Inadequate Machinery and Powers of Existing Agencies

The number of inspectors to cover all the establishments and conditions with which the labor department has to deal, always has been and probably always will be inadequate. Therefore the greater is the need for improvement in the organization and skill in the supervision of their work. The educational work of the inspector and the publicity given to the law and to demonstrations of its reasonableness in language that every employer and employee can understand, become increasingly important as the work of the department becomes more complex and difficult. Not only is the present lack of consolidation of functions in the industrial board and the office of the commissioner of labor incomplete and inadequate but two definite tasks for the proper fulfillment of the industrial relations function are specially weak and partially unprovided for. These are first, the protection of employers and employees, or the function of rendering aid to employees who have reasonable claims against employers or are the victims of exploitation and injustice at the hands of strong corporate organizations of employers, and likewise the function of rendering aid to individual employers in determining the legality of the tactics and acts of trade unions and strong corporate organizations of employees when they exceed their legal rights and try to oppress or intimidate the employer. Secondly, the provision for industrial councils either state-wide for industry as a whole or for separate industries or local according to trades or geographical areas, for the purpose of bringing face to face the partisan representatives of employers' and employees' organizations and placing before them for discussion and advice the plans of the labor department in the interpretation and enforcement of the law, also proposals of rules and orders extending and applying the labor law to specific cases. Both of these tasks are partially provided for, the first through the industrial and immigration bureau of the department of labor,

*For this and other evidence of similar import, see brief in support of industrial commission bill submitted by American Association for Labor Legislation to Governor Whitman at a public hearing on the Spring Bill, May 5, 1915.

which, however, confines its efforts chiefly to aliens, and the second through the voluntary action of the industrial board in the organization of the state industrial board committees and sub-committees for the initial preparation of rules and regulations in the several departments of its work which has been divided as follows:

Fire hazards
Ventilation and lighting
Sanitation and comfort
Dangerous machinery
Dangerous trades and processes
Bakeries and confectioneries
Foundries
Mines, tunnels and quarries

These committees contain persons regarded as having expert knowledge in these respective subjects but they are not frankly organized on the basis of partisan representation of conflicting interests with a view to their reconciliation in advance of the enactment of standards into law or rules and regulations having the force of law. They do not provide adequately at least the machinery for the new methods of compromise and education in order to secure a higher degree of compliance with desirable standards than can be secured with inadequate inspection through reliance on the policeman's club and prosecutions alone.

Part VII.—Organization for Administration of Public Utilities Regulation

Under the present organization of the state government, the regulation of public utilities is controlled through the agency of the two public service commissions, the commissions each consisting of five members appointed by the governor with the advice and consent of the senate for overlapping terms of five years each, and receiving a salary of $15,000 per year.

Functions of the Public Service Commission, First District

The commission of the 1st district is charged with the regulation and supervision of common carriers, gas, electric and steam companies, operating, wholly or in part, within the counties of New York, Kings, Queens, Richmond and the Bronx, as provided for in the public service commissions law; supervision of the protection, elimination and rearrangement of grade crossings; issuance of certificates of public convenience and necessity in connection with the construction of new railroads; approval of assignments or transfers of franchises, approval of abandonment of routes and approval of change of motor power, under the Railroad Law; supervision of the construction, equipment, operation and maintenance of additional rapid transit facilities for the city of

New York and the granting of rapid transit franchises as provided for in the Rapid Transit Act.

Functions of Public Service Commission, Second District

The public service commission of the 2d district is charged with the regulation and supervision of all common carriers (other than steamboat lines) gas, electric, steam heating and stock yard corporations, operating within the state, except those operating wholly within the counties comprising Greater New York, as provided for in the public service commissions law; supervision of the protection, elimination and rearrangement of grade crossings; issuance of certificates of public convenience and necessity in connection with the construction of new railroads; approval of assignments or transfer of franchises; approval of abandonment of routes, under the Railroad Law; supervision and regulation of telephone and telegraph corporations possessing physical property of a valuation of $10,000 or over, operating within the state (including Greater New York), as provided for in the public service commissions law.

Common Powers Exercised

Each commission has power to compel attendance of witnesses; regulate the conduct and management of common carriers and transportation corporations; hear and investigate complaints; approve contracts and leases; fix standards of heating value, illuminating power and purity of gas; inspect gas and electric meters; prescribe uniform methods of accounting; regulate the issuance of securities; require special, periodical reports; investigate accidents; take summary proceedings to discontinue violations of law or the orders of the commission. A counsel, secretary and such experts, inspectors, clerks and other employees as may be necessary are appointed by the commissions. The commission of the first district has jurisdiction over the public utilities operating within the corporate limits of the City of New York, with the exception of the telephone companies, which are controlled through the entire state by the commission of the second district. The commission of the second district has general supervision of the public utilities in the remainder of the state. Complete description of the organization and personnel of these commissions may be found in the report on the organization and functions of the state government, pages 153 to 227.

Critical Appraisal of the Organization and Present Method of Regulating Public Utilities

Lack of Means for Locating and Enforcing Executive Responsibility

With the present system of appointment and removal it is impossible to enforce executive responsibility. The governor of the state cannot

be held responsible for the official acts of the commissioners, yet popular sentiment measures the efficiency of a governor's administration not a little by the effectiveness of the regulation of the public utilities. Under normal circumstances a governor during his incumbency would have the appointment of but two members of each commission. He has no control over the acts of the commission except in the exercise of his right to remove commissioners from office upon the substantiation of formal charges alleging incompetency, inefficiency or misconduct in office, and this power is ineffective for the direction and control of administration.

It is conceded that in the administration of the public utilities regulation, which involves the control over hundreds of millions of dollars of invested capital, there must be a strong factor of stability in policy and program, yet at the same time it is highly desirable that the executive officer of the state have available some method for impressing on the public service commissions the policies of his administration. Some method must also be provided for enforcing the opinions of the people upon the public service commissions and this cannot be effected through the removal rights now given to the governor. A difference of opinion in administrative matters between the public service commissions and the administration elected by the people, and presumably held responsible by them, does not imply inefficiency, incompetency or misconduct on the part of the commissioners. What is needed is the establishment of a responsible and responsive body for the regulation of the public utilities in place of the existing organization which is essentially an independent body with both legislative and administrative powers.

A Question of Geographic Distribution

It was evidently the intention of the drafters of the present public service law to recognize the differences in the public utilities problems encountered in the City of New York and those of the balance of the state, yet these problems, in so far as they affect the well-being of the citizens of New York, are not confined within the corporate limits of the city, but extend throughout the metropolitan district surrounding the city. The lack of jurisdiction of the commission of the first district over the transportation lines in Westchester, Nassau, and Suffolk counties has interfered with the promulgation and carrying out of a complete New York City transit program.

Two Distinct Problems of Utilities Regulation Not Recognized by the Present Law

To those who have followed the history of the public service commissions, particularly that of the first district, and have reviewed their administrative mistakes, or alleged mistakes, it is obvious that many of these difficulties have arisen from the confusion of the two main functions of regulation, *i. e.*, the promulgation of orders, and the enforcement of the orders after their issuance. These two activities are fundamentally different, and should be so approached in providing an organization for their conduct. The promulgation of orders and regulations and the action on complaints are primarily adjudicative and legislative functions, while the administration of inspections and enforcement of orders after they have been issued is an administrative function. The former demands a type of mind which has too often in private and public business been found unfitted for the irritating routine of an administrative department. The enforcement of orders, which is primarily a question of inspection and quasi police duty, is usually best handled by a type of man not particularly adapted for adjudicative proceedings. Moreover, the adjudicative and legislative side of public utilities regulation could well be handled more or less independently of the administration as under the present system, whereas it would be highly desirable to hold an executive directly responsible for the enforcement of orders, after they are issued, through providing that the work be handled by an administrative department. Without a clear-cut distinction of these two duties in the organization of the public service commissions, it is almost inevitable that one of the two will be slighted. The history of the public service commissions shows that of the two it is the enforcement of the rules after they have been issued formally by the commission which has received the smaller amount of attention.

The State Should Not Construct City-Owned Subways

The principle of home rule is directly related to the question of jurisdiction of the public service commission of the first district where subways paid for by the city and to be operated by the city's agents are designed and constructed by a state agency. Just why the public service commission should be required to design and construct the local subways and put themselves in a position to raise differences of opinion between the state and city officials is a question to be answered by those who are responsible for the public service bill. It would be unwise no doubt to interrupt the work of completing the present subway system by changing the control over this work from the state to the city, but it would be still more unwise to continue the present practice for future work. No matter what arbitrary right may be given a public service commission for the construction of the city's subways, it would be impossible to give the complete control of this work to the state commission without breaking down entirely the jurisdiction of the city over its finances, so that the present subways, although ostensibly constructed by the public service commission, are really the result of a co-operative effort of the public service commission and state officials and the officials of the city government, most of which co-operation was effected

by voluntary efforts of public service commission engineers and other officials rather than by the exercise of the financial rights of the city.

Two Commissions Unnecessary

If the construction of the city's subways in New York City is eliminated from the jurisdiction of the public service commission, there is little reason left for having two separate commissions as legislative and judicial bodies. By this it is not meant that it would not be desirable to retain two executive departments or divisions for inspection and the current enforcement of rules and orders after their issuance. Administrative efficiency is not infrequently made more effective by geographical subdivision of responsibility, but this does not apply to the legislative powers. Administrative efficiency and definition of responsibility would probably demand the districting of the state for the enforcement of orders and the setting aside of the metropolitan district of New York City from the remainder of the state would be a logical apportionment.

For the adjudication of public utilities questions and for the formulation of orders governing the operation of these utilities, two commissions are unnecessary and in fact tend to confusion. The question of capitalization and organization of public utilities corporations, together with the rates for service, is as an important part of the commissions' duties as the regulation of the number of cars on a particular surface line and as the determination of the number of seats which must be provided on the subway and elevated lines of New York City. These questions of capitalization, organization and rates must be determined on established principles, and such principles unquestionably should be standards for the entire state. The present organization, whereby two commissions of independent but co-ordinate powers have been established, has not facilitated such standardization. It is also conceivable that the members of a public service commission having jurisdiction over the entire state, in so far as the issuance of orders is concerned, would be broadened by meeting problems in different sections of the state.

No Control Over Inland Waterways

One fundamental weakness in the present jurisdiction of the public service commissions is that they have no control over the common carriers on the inland waters of the state and in competition to the railroads, over which the commissions have almost complete jurisdiction. If proper control of the transportation problem is to be obtained through the agency of the Public Service Commission, it is essential that the jurisdiction of the department comprehend all of the transportation interests.

Although the question of control by the public service commission over the steamboat and barge lines is important to-day, it will be of much greater importance on the completion of the barge canal. This great

enterprise, which, upon completion, will have cost the state more than $130,000,000, will need careful management in order to become a profitable enterprise. One of the important factors in such management will be the control over canal boat rates; the only agency available for the exercise of such regulative control is the public service commission, which is to-day helpless on account of lack of jurisdiction.

PART VIII.—ORGANIZATION FOR THE REGULATION OF BANKING AND INSURANCE

The present control over the banking and insurance companies of the state is effected through the agency of two independent departments:

1. The banking department.
2. The insurance department.

Functions of the Banking Department

This department is charged with the general supervision of (a) banks, (b) trust companies (c) savings banks, (d) loan, mortgage and investment companies, (e) building, mutual loan and cooperative savings associations, and (f) credit unions, operating under the laws of the state of New York. The laws regulating the conduct of these institutions are enforced through periodic investigations by the examining staff of the department. The banking department also prepares an annual digest of the reports of the various financial institutions of the state and reports the same in summary form to the legislature. The organization and personnel of this department will be found on pages 101 to 107 inclusive of the report on organization and functions of the state government.

Functions of the Insurance Department

This department is charged with the execution of the laws of the state relating to insurance. The department has supervisory control over all insurance companies, brokers and agencies transacting business in the state. It has custody of the securities of life and casualty companies of this state and of other countries and of fire and marine insurance companies of foreign governments deposited with it for the protection of policy holders residing in the United States; examines into the affairs of corporations, associations, societies and orders, transacting, controlling or organizing an insurance business in the state; receives reports under oath at regular intervals from such corporations, etc., abstracts of which are to be included in the annual reports to the legislature; acts as attorney for insurance companies organized under the laws of other states or countries in order that process in any action or proceeding against such companies may be served promptly; values annually all outstanding policies, additions thereto, unpaid dividends and all other obligations of every insurance corporation doing business in the state. The department is empowered in certain cases, after due process of law.

to take possession of an insurance corporation and conduct its business as the exigencies of the case may demand. The department is empowered to refuse admission to any company, corporation or association applying for permission to transact insurance business in the state whenever such refusal to admit shall be for the best interests of the people of the state.

Defects in Organization for Purposes of Administration

The present departments of banking and insurance are subject to criticism not so much on account of inadequate internal organization as that their dissociation prohibits the securing of certain advantages which would be made possible through amalgamation of the two departments.

The work of the staff auditors and examiners of the two departments is closely related, yet the complete dissociation of the two bodies, as the departments are now organized, necessitates certain duplication in force and effort and obviously narrows the perspective of both branches.

It is also a fact that certain trust companies throughout the state are, under the present practice, required to report to both the banking and the insurance departments and are, therefore, subject to the general supervision and discipline of two regulating departments. This is obviously unfair to the trust companies and causes a needless waste of public money.

From the standpoint of locating and enforcing executive responsibility without impairing the technical and professional service of the bureaus, the present organization is also subject to criticism. The administrative heads in direct supervision of the forces engaged in regulating banks and insurance companies should unquestionably be technical men of the highest order. The actuarial accounting and examining positions and the positions of supervision over actuarial accounting and examining staffs in these departments also require men of the very highest order and are positions which require continuity of service for effective administration.

Regulation of banking and insurance companies occupies a large place in public thinking and the administration of such regulations is closely related to the enforcement of policies for which the governor is held responsible by public opinion, though not as a matter of constitutional and statute law. This would seem to demand that he have certain powers which will enable the legislature and the electorate to hold executives in general charge of this work to account for their stewardship. At the present time, however, the only method available for the governor to impress his official personality on the administration of these departments is to appoint men to the technical and professional supervisory positions in these bureaus whose selection is made a part of a plan of irresponsible party politics.

APPENDIX

THE CONSTITUTION OF 1894

Rearranged under Functional Heads, Captions Corresponding with Subjects Discussed in Report and Annotated to Prior Constitutions

To the end that the provisions governing the organization powers, duties and limitations of the government of the state may be made more readily available to members of the convention and to others (who may be interested in this report) all of the matter of the Constitution has been rearranged under the following titles:

Enacting Clause
Declaration of Rights Reserved by the People
The Electorate and Electors
Officers
The Legislature
The Executive
Financial and Other Proprietary Departments, Boards and Offices
Civil Departments for Rendering Service to the Public
Military Government
The General Auditor
The Courts
Local Government
Amendments
Provisions of Private Law included in the Constitution
Schedule (Interim and Temporary Provisions)

In this rearrangement the language of the present Constitution is used, except where by breaking up the context the meaning would be impaired without change of verbal form, in which event the words supplied are put in brackets. The annotations at the side constitute an outline analysis with exact references to the original document. The annotations at the bottom of each paragraph are to former Constitutions—the purpose being to give a complete history of the evolution of each clause as used here. The use of running article numbers, section numbers and paragraph numbers in the text is for convenience of reference to the rearrangement.

THE CONSTITUTION OF THE STATE OF NEW YORK

Rearranged and Annotated

ENACTING CLAUSE—PREAMBLE*

Enacting Clause
Purpose

We the People of the State of New York, grateful to Almighty God for our freedom, in order to secure its blessing do establish this Constitution.

ARTICLE I

DECLARATION OF RIGHTS RESERVED BY THE PEOPLE

Section 1. [The people of the state hereby make this declaration of principles and reserve to themselves the following rights, which may not be impaired.]

Citizenship
Art. 1, Sec. 1

2. No member of this state shall be disfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land, or the judgment of his peers.

(1777, XIII; 1821, VII, 1; 1846, I, 1)

Religious Freedom
Art. I, Sec. 3

3. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this state to all mankind. * * * The liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state.

(1777, XXXVIII; 1821, VII, 3; 1846, I, 3)

Freedom of Speech and of the Press
Art. I, Sec. 8

4. Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right.

(1821, VII, 8; 1846, I, 8)

Habeas Corpus
Art. I, Sec. 4

5. The privilege of the writ of *habeas corpus* shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require its suspension.

(1821, VII, 6; 1846, I, 4)

Jury Trial
Art. I, Sec. 2

6. The trial by jury in all cases in which it has been heretofore used shall remain inviolate forever; but a jury trial may be waived by the parties in all civil cases in the manner to be prescribed by law.

(1777, XLI; 1821, VII, 2; 1846, I, 2)

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* While the constitution of 1777 had no preamble it had an elaborate introduction which took up one-third of the entire document. Beginning with the statement that, "Whereas the many tyrannical and oppressive usurpations of the King and Parliament of Great Britain on the rights and liberties of the people of the American colonies had reduced them to the necessity of introducing a government by congresses and committees, as temporary expedients, and to exist no longer than the grievances of the people should remain without redress," it proceeded to set forth the resolution of the General Congress recommending that new governments be organized in the colonies; the resolution of the Congress of the colony of New York, making recommendations for carrying this suggestion into effect; the fact that delegates had been elected with authority to frame a new government; the declaration of independence in full and the fact of its approval by the delegates and then continued: "By virtue of which several acts, declarations, and proceedings mentioned and contained in the afore-cited resolves or resolutions of the general Congress of the United American States, and of the congress or conventions of this State, all power whatever therein hath reverted to the people, thereof, and this convention hath by their suffrages and free choice been appointed, and among other things authorized to institute and establish such a government, as they shall deem best calculated to secure the rights and liberties of the good people of this State, most conducive of the happiness and safety of their constituents in particular, and of America in general. This convention, therefore, in the name and by the authority of the good people of this State, doth ordain, determine, and declare that no authority shall, on any pretense whatever, be exercised over the people or members of this State, but such as shall be derived from and granted by them." In a similar way the convention of 1801 prefaced its amendments by a recital of the act of the legislature providing for the election of delegates, the election of delegates and the fact of their deliberation. The convention of 1821 dropped the long introduction and adopted the following preamble: "We, the people of the State of New York, acknowledging with gratitude the grace and beneficence of God in permitting us to make choice of our form of government, do establish this constitution." In 1846 the preamble was amended to its present form.

Excessive Bail and Punishment Detention of Witnesses
Art. I, Sec. 5

7. Excessive bail shall not be required nor excessive fines imposed, nor shall cruel and unusual punishments be inflicted, nor shall witnesses be unreasonably detained.
(1846, I, 5)

Indictment
Art. I, Sec. 6

8. No person shall be held to answer for a capital or other infamous crime (except in cases of impeachment, and in cases of militia when in actual service, and the land and naval forces in time of war, or which this state may keep with consent of congress in time of peace, and in cases of petit larceny under the regulation of the legislature), unless on presentment or indictment of a grand jury.
(1821, VII, 7; 1846, I, 6)

Double Jeopardy
Art. I, Sec. 6

9. No person shall be subject to be twice put in jeopardy for the same offense.
(1821, VII, 7; 1846, I, 6)

Criminating Evidence
Art. I, Sec. 6

10. [No person shall] be compelled in any criminal case to be a witness against himself.
(1821, VII, 7; 1846, I, 6)

Due Process
Art. I, Sec. 6

11. [No person shall] be deprived of life, liberty, or property without due process of law.
(1821, VII, 7; 1846, I, 6)

Counsel
Art. I, Sec. 6

12. In any trial in any court whatever the party accused shall be allowed to appear and defend in person and with counsel as in civil actions.
(1821, VII, 7; 1846, I, 6)

Taking Private Property
Art. I, Sec. 6

13. Private property [shall not] be taken for public use, without just compensation.
(1821, VII, 7; 1846, I, 6)

ARTICLE II

THE ELECTORATE AND ELECTIONS

The Electorate

General Qualifications
Art. II, Sec. 1

Section 1. Every male citizen of the age of twenty-one years, who shall have been a citizen for ninety days, and an inhabitant of this state one year next preceding an election, and for the last four months a resident of the county and for the last thirty days a resident of the election district in which he may offer his vote, shall be entitled to vote at such election in the election district of which he shall at the time be a resident, and not elsewhere, for all officers that now or hereafter may be elective by the people, and upon all questions which may be submitted to the vote of the people, provided that in time of war no elector in the actual military service of the state, or of the United States, in the army or navy thereof, shall be deprived of his vote by reason of his absence from such election district.
(1777, VII; 1821, II, 1; 1846, II, 1)

2. The legislature shall have power to provide the manner in which and the place at which such absent electors may vote, and for the return and canvass of their votes in the election districts in which they respectively reside.
(1846, II, 1, added in 1874)

Residence
Art. II, Sec. 3

Section 2. For the purpose of voting, no person shall be deemed to have gained or lost a residence, by reason of his presence or absence, while employed in the service of the United States; nor while engaged in the navigation of the waters of this state, or of the United States, or of the high seas; nor while a student of any seminary of learning; nor while kept at any almshouse, or other asylum, or institution wholly or partly supported at public expense, or by charity; nor while confined in any public prison.
(1846, II, 3)

Registration
Art. II, Sec. 4

Section 3. Registration shall be completed at least ten days before each election. Such registration shall not be required for town or village elections except by express provisions of law. In cities and villages having five thousand inhabitants or more, according to the last preceding state enumeration of inhabitants, voters shall be registered upon personal application only; but voters not residing in such cities or villages shall not be required to apply in person for registration at the first meeting of the officers having charge of the registry of voters.

Persons Excluded from Right of Suffrage
Art. II, Sec. 2

Section 4. No person who shall receive, accept, or offer to receive, or pay, offer or promise to pay, contribute, offer or promise to contribute to another, to be paid or used, any money or other valuable thing as a compensation or reward for the giving or withholding a vote at an election, or who shall make any promise to influence the giving or withholding any such vote, or who shall make or become directly or indirectly interested in any bet or wager depending upon the result of any election, shall vote at such election; and upon challenge for such cause, the person so challenged, before the officers authorized for that purpose shall receive his vote, shall swear or affirm before such officers that he has not received or offered, does not expect to receive, has not paid, offered or promised to pay, contributed, offered or promised to contribute to another, to be paid or used, any money or other valuable thing as a compensation or reward for the giving or withholding a vote at such election, and has not made or become directly or indirectly interested in any bet or wager depending upon the result of such election. [Persons convicted of bribery or of any infamous crime may be excluded from the right of suffrage in the manner provided in article IV, section 21, paragraph 2.]
(1846, II, 2, as amended, 1874)

Elections

General Provisions
Art. II, Sec. 5

Section 5. All elections by the citizens, except for such town officers as may by law be directed to be otherwise chosen, shall be by ballot, or by such other method as may be prescribed by law, provided that secrecy in voting be preserved.
(1777, VI; 1821, II, 4; 1846, II, 5)

Bi-partisan Election and Registration Boards
Art. II, Sec. 6

Section 6. All laws creating, regulating or affecting boards of officers charged with the duty of registering voters, or of distributing ballots at the polls to voters, or of receiving, recording or counting votes at elections, shall secure equal representation of the two political parties which, at the general election next preceding that for which such boards or officers are to serve, cast the highest and the next highest number of votes. All such boards and officers shall be appointed or elected in such manner, and upon the nomina-

tion of such representatives of said parties respectively, as the legislature may direct. Existing laws on this subject shall continue until the legislature shall otherwise provide. This section shall not apply to town meetings, or to village elections.

Time of Election
Members of Legislature
Art. III, Sec. 9

Section 7. The elections of senators and members of assembly, pursuant to the provisions of this constitution, shall be held on the Tuesday succeeding the first Monday of November, unless otherwise directed by the legislature.

(1821, I, 15; 1846, III, 9)

Governor and Lieut.-Governor
Art. IV, Sec. 3

2. The governor and lieutenant-governor shall be elected at the times and places of choosing members of the assembly.

(1821, I, 15; 1846, IV, 3)

Secretary of State, Comptroller, Treasurer, Attorney-General, State Engineer
Art. V, Sec. 1

3. The secretary of state, comptroller, treasurer, attorney-general and state engineer and surveyor shall be chosen at a general election, at the times and places of electing the governor and lieutenant-governor.

(1846, V, 1; see 1777, XXII and 1821, IV, 6)

County Judges
Art. VI, Sec. 14

4. The additional county judges whose offices may be created by the legislature shall be chosen at the general election held in the first odd-numbered year after the creation of such office.

Sheriffs, County Clerks, District Attorneys, Registers
Art. X, Sec. 1

5. Sheriffs, clerks of counties, district attorneys, and registers in counties having registers, shall be chosen * * * once in every three years and as often as vacancies shall happen, except in the counties of New York and Kings, and in counties whose boundaries are the same as those of a city, where such officers shall be chosen * * * once in every two or four years as the legislature shall direct.

(1821, IV, 8; 1846, X, 1; see 1777, XXVI)

Justices of the Peace
Art. VI, Sec. 17

6. The electors of the several towns shall, at their annual town meetings, or at such other time and in such manner as the legislature may direct, elect justices of the peace.

(1846, VI, 17; see 1821, IV, 7)

City Officers
Art. XII, Sec. 3

7. All elections of city officers, including supervisors and judicial officers of inferior local courts, elected in any city or part of a city, and of county officers elected in the counties of New York and Kings, and in all counties whose boundaries are the same as those of a city, except to fill vacancies, shall be held on the Tuesday succeeding the first Monday in November in an odd-numbered year * * *. This section shall not apply to any city of the third class, or to elections of any judicial officer, except judges and justices of inferior local courts.

Election Districts
Senate
Art. III, Sec. 3

Section 8. The State shall be divided into fifty districts to be called senate districts, each of which shall choose one senator. The districts shall be numbered from one to fifty, inclusive.

(1777, XII; amendment of 1801; 1821, I, 5; 1846, III, 3)

Apportionment
Senate
Art. III, Sec. 4

Section 9. The said districts shall be so altered by the legislature at the first regular session after the return of every enumeration, that each senate district shall contain as nearly as may be an equal number of inhabitants, excluding aliens, and be in as compact form as practicable, and shall remain unaltered until the return of another enumeration, and shall, at all times, consist of contiguous territory.

(1777, XII; amendment of 1801; 1821, I, 6; 1846, III, 4)

2. No county shall be divided in the formation of a senate district except to make two or more senate districts wholly in such county.

(1821, I, 6; 1846, III, 4)

3. No town, and no block in a city inclosed by streets or public ways, shall be divided in the formation of senate districts; nor shall any district contain a greater excess in population over an adjoining district in the same county than the population of a town or block therein, adjoining such district. Counties, towns or blocks which, from their location, may be included in either of two districts, shall be so placed as to make said districts most nearly equal in number of inhabitants, excluding aliens.

4. No county shall have four or more senators unless it shall have a full ratio for each senator. No county shall have more than one-third of all the senators; and no two counties or the territory thereof as now organized, which are adjoining counties, or which are separated only by public waters, shall have more than one-half of all the senators.

5. The ratio for apportioning senators shall always be obtained by dividing the number of inhabitants, excluding aliens, by fifty, and the senate shall always be composed of fifty members, except that if any county having three or more senators at the time of any apportionment shall be entitled on such ratio to an additional senator or senators, such additional senator or senators shall be given to such county in addition to the fifty senators, and the whole number of senators shall be increased to that extent.

Assembly
Art. III, Sec. 5

Section 10. The members of the assembly shall be chosen by single districts and shall be apportioned by the legislature at the first regular session after the return of every enumeration among the several counties of the state, as nearly as may be according to the number of their respective inhabitants, excluding aliens. Every county heretofore established and separately organized except the county of Hamilton, shall always be entitled to one member of assembly, and no county shall hereafter be created unless its population shall entitle it to a member. The county of Hamilton shall elect with the county of Fulton, until the population of the county of Hamilton shall, according to the ratio, entitle it to a member. But the legislature may abolish the said county of Hamilton and annex the territory thereof to some other county or counties.

(1777, IV, V; 1821, I, 7; 1846, III, 5, see amendment of 1801)

2. The quotient obtained by dividing the whole number of inhabitants of the state, excluding aliens, by the number of members of assembly, shall be the ratio for apportionment, which shall be made as follows: One member of assembly shall be apportioned to every county, including Fulton and Hamilton as one county, containing less than the ratio and one-half over. Two members shall be apportioned to every other county. The remaining members of assembly shall be apportioned to the counties having more than two ratios according to the number of inhabitants, excluding aliens. Members apportioned on remainders shall be apportioned to the

counties having the highest remainders in the order thereof respectively. No county shall have more members of assembly than a county having a greater number of inhabitants, excluding aliens.

(See references to preceding paragraph.)

3. In any county entitled to more than one member, the board of supervisors, and in any city embracing an entire county and having no board of supervisors, the common council, or if there be none, the body exercising the powers of a common council, shall assemble on the second Tuesday of June, one thousand eight hundred and ninety-five, and at such times as the legislature making an apportionment shall prescribe, and divide such counties into assembly districts as nearly equal in number of inhabitants, excluding aliens, as may be, of convenient and contiguous territory in as compact form as practicable, each of which shall be wholly within a senate district formed under the same apportionment, equal to the number of members of assembly to which such county shall be entitled, and shall cause to be filed in the office of the secretary of state, and of the clerk of such county, a description of such districts, specifying the number of each district and of the inhabitants thereof, excluding aliens, according to the last preceding enumeration and such apportionment and districts shall remain unaltered until another enumeration shall be made, as herein provided; but said division of the city of Brooklyn and the county of Kings to be made on the second Tuesday of June, one thousand eight hundred and ninety-five, shall be made by the common council of the said city and the board of supervisors of said county, assembled in joint session. In counties having more than one senate district, the same number of assembly districts shall be put in each senate district, unless the assembly districts cannot be evenly divided among the senate districts of any county, in which case one more assembly district shall be put in the senate district in such county having the largest, or one less assembly district shall be put in the senate district in such county having the smallest number of inhabitants, excluding aliens, as the case may require. No town, and no block in a city inclosed by streets or public ways shall be divided in the formation of assembly districts, nor shall any district contain a greater excess in population over an adjoining district in the same senate district, than the population of a town or block therein adjoining such assembly district. Towns or blocks which, from their location, may be included in either of two districts, shall be so placed as to make said districts most nearly equal in number of inhabitants, excluding aliens; but in the division of cities under the first apportionment, regard shall be had to the number of inhabitants, excluding aliens; of the election districts according to the state enumeration of one thousand eight hundred and ninety-two, so far as may be, instead of blocks. Nothing in this section shall prevent the division, at any time, of counties and towns, and the erection of new towns by the legislature.

(See 1846, III, 5)

Judicial Districts
Art. VI, Sec. 1

Section 11. The existing judicial districts of the state are continued until changed as hereinafter provided. * * * The legislature may alter the judicial districts once after every enumeration under the constitution, of the inhabitants of the state, and thereupon reapportion the justices to be thereafter elected in the districts so altered. * * * The legislature may erect out of the second judicial district as now constituted, another judicial district and apportion the justices in office between the districts, and provide for the election of

additional justices in the new district not exceeding the limit herein provided [in article X, section 4, paragraph 2].

(1846, VI, 4, 5; VI, 1, as amended 1879; amended 1905)

ARTICLE III

OFFICERS

Qualifications and Disqualifications

Members of Legislature
Art. III, Sec. 8

Section 1. No person shall be eligible to the legislature, who at the time of his election, is, or within one hundred days previous thereto has been a member of congress, a civil or military officer under the United States, or an officer under any city government.

(1821, I, 11; 1846, III, 8)

Governor and Lieutenant-Governor
Art. IV, Sec. 2

Art. IV, Sec. 7

2. No person shall be eligible to the office of governor or lieutenant-governor, except a citizen of the United States, of the age of not less than thirty years, and who shall have been five years next preceding his election a resident of this state. * * * The lieutenant-governor shall possess the same qualifications of eligibility for office as the governor.

(1821, III, 2; 1846, IV, 2, 7; amendment of IV, 2, 1874)

State Engineer
Art. V, Sec. 1

3. No person shall be elected to the office of state engineer and surveyor who is not a practical civil engineer.

(1846, V, 2)

Court of Appeals, Supreme Court and County Courts
Art. VI, Sec. 20

4. No one shall be eligible to the office of judge of the court of appeals, justice of the supreme court, or, except in the county of Hamilton, to the office of county judge or surrogate, who is not an attorney and counselor of this state.

(1846, VI, 21, as amended, 1869)

Court of Appeals
Art. VI, Sec. 7

5. No justice shall serve as associate judge of the court of appeals, except while holding the office of justice of the supreme court.

(1894, VI, 7, as amended 1899)

Appellate Division
Art. VI, Sec. 2

6. [The presiding justice of an appellate division of the supreme court] shall be a resident of that department. * * * A majority of the justices * * * designated to sit in the appellate division in each department shall be residents of that department.

Supreme Court Justices
Art. VI, Sec. 1

7. [Justices of the supreme court] shall reside in [their respective judicial districts.]

(1846, VI, 6, as amended 1869 and 1879)

Methods of Selection

By Election
Members of Legislature
Art. III, Sec. 2

Section 2. [Senators and members of assembly shall be elected by popular vote.]

(1777, IV, XI; 1821, I, 2; 1846, III, 2)

Governor and Lieutenant-Governor
Art. IV, Sec. 3

2. [The governor and lieutenant-governor shall be elected by popular vote.] The persons respectively having the highest number of votes for governor and lieutenant-governor shall be elected; but in case two or more shall have an equal and the highest number of votes for governor, or for lieutenant-governor, the two houses of the legislature at its next annual session shall forthwith, by joint ballot, choose one of the

said persons so having an equal and the highest number of votes for governor or lieutenant-governor.

(1777, XVII, XX; 1821, III, 3; 1846, IV, 3)

Secretary of State, Comptroller, Treasurer, Attorney-General, State Engineer
Art. V, Sec. 1

3. [The secretary of state, comptroller, treasurer, attorney-general and state engineer and surveyor shall be elected by popular vote.]

(1846, V, 1, 2, see 1821, IV, 6 and 1777, XXII)

Court of Appeals
Art. VI, Sec. 7

4. [The justices of the court of appeals] shall be chosen by the electors of the state [except as designations are made by the governor as provided in article III, section 3, paragraph 4.]

(1846, VI, 2, as amended 1869, see 1846, VI, 2, 12)

Supreme Court
Art. VI, Sec. 1

5. The successors of [the] justices [of the supreme court] shall be chosen by the electors of their respective judicial districts.

(1846, VI, 4, 12; 1869, VI, 13)

County Judges
Art. VI, Sec. 14

6. All county judges, including successors to existing judges, shall be chosen by the electors of the counties.

(1846, VI, 15, as amended, 1869, see 1846, VI, 14)

Surrogates
Art. VI, Sec. 15

7. [The] successors [of the surrogates] shall be chosen by the electors of their respective counties.

(See 1846, VI, 15, as amended, 1869)

Sheriffs, County Clerks, District Attorneys, Registers
Art. X, Sec. 1

8. Sheriffs, clerks of counties, district attorneys, and registers in counties having registers, shall be chosen by the electors of the respective counties.

(1821, IV, 8; 1846, X, 1, see 1777, XXVI)

Justices of Peace—Towns
Art. VI, Sec. 17

9. [Justices of the peace of towns shall be elected by the electors of the several towns.]

(1846, VI, 18, see 1821, IV, 7; 1777, XXIII)

Justices of Peace, District Court Justices—Cities
Art. VI, Sec. 17

10. [Justices of the peace and district court justices] may be elected in the different cities of this state in such manner [as shall be prescribed by law.]

(1846, VI, 18, as amended, 1869, see 1846, VI, 18; 1821, IV, 7; 1777, XXIII)

Appointment By the Legislature
Art. III, Sec. 10

Section 3. [The senate and the assembly each] shall choose its own officers.

(1821, I, 3; 1846, III, 10, see 1777, IX)

By the Governor
Art. V, Sec. 7

2. The governor shall appoint a competent person to discharge the duties of the office during [the] suspension of the treasurer.

(1846, V, 7)

Art. VI, Sec. 2

3. From all the justices elected to the supreme court the governor shall designate those who shall constitute the appellate division in each department; and he shall designate the presiding justice thereof. * * * From time to time as the terms of such designations expire, or vacancies occur, he shall make new designations. * * * He may also make temporary designations in case of the absence or inability to act of any justice in the appellate division, or in case the presiding justice of any appellate division shall certify to him that one or more additional justices are needed for the speedy disposition of the business before it.

(1894, VI, 2; 1899, VI, 2, see 1846, VI, 6, 1869, VI, 7)

Art. VI, Sec. 7

4. Whenever and as often as a majority of the judges of the court of appeals shall certify to the governor that said court is unable, by reason of the accumulation of causes pending therein, to hear and dispose of the same with reasonable speed, the governor shall designate not more than four justices of the supreme court to serve as associate judges of the court of appeals. The justices so designated shall be relieved from their duties as justices of the supreme court and shall serve as associate judges of the court of appeals until the causes undisposed of in said court are reduced to two hundred, when they shall return to the supreme court. The governor may designate justices of the supreme court to fill vacancies.

(1899, VI, 7)

By the Governor with Advice of the Senate
Art. VI, Sec. 8

5. When a vacancy shall occur otherwise than by expiration of term in the office of chief or associate judge of the court of appeals, the same shall be filled, for a full term, at the next general election happening not less than three months after such vacancy occurs; and until the vacancy shall be so filled, the governor, by and with the advice and consent of the senate, if the senate shall be in session, or if not in session the governor may fill such vacancy by appointment. If any such appointment of chief judge shall be made from among the associate judges, a temporary appointment of associate judge shall be made in like manner; but in such case, the person appointed chief judge shall not be deemed to vacate his office of associate judge any longer than until the expiration of his appointment as chief judge. * * * All appointments made under this section shall continue until and including the last day of December next after the election at which the vacancy shall be filled.

(1846, VI, 3, as amended, 1869, see 1846, VI, 2)

Art. VI, Sec. 4

6. When a vacancy shall occur otherwise than by expiration of a term in the office of the justice of the supreme court the same shall be filled for a full term, at the next general election; happening not less than three months after such vacancy occurs; and, until the vacancy shall be so filled, the governor by and with the advice and consent of the senate, if the senate shall be in session, or if not in session the governor may fill such vacancy by appointment, which shall continue until and including the last day of December next after the election at which the vacancy shall be filled.

(1846, VI, 9, as amended, 1869)

Art. VI, Sec. 15

7. Vacancies occurring in the office of county judge or surrogate shall be filled in the same manner as like vacancies occurring in the supreme court.

Art. VIII, Sec. 12

8. The members of the [state board of charities, the state commission in lunacy, and the state commission of prisons] shall be appointed by the governor, by and with the advice and consent of the senate.

Art. V, Sec. 4

9. A superintendent of state prisons shall be appointed by the governor, by and with the advice and consent of the senate.

(1846, V, 4, as amended, 1869)

Art. V, Sec. 3

10. A superintendent of public works shall be appointed by the governor, by and with the advice and consent of the senate. * * * The governor, by and with the advice and consent of the senate, shall have power to fill vacancies in the office of superintendent of public works; if the senate be

not in session, he may grant commissions which shall expire at the end of the next succeeding session of the senate.
(1846, V, 3, as amended, 1869)

By the Courts
Art. VI, Sec. 7

11. The court [of appeals] shall have power to appoint * * * its reporter, clerk and attendants.
(1846, VI, 2, as amended, 1869, see 1846, VI, 19)

Art. VI, Sec. 2

12. [The appellate division of the supreme court] shall have power to appoint * * * a reporter.

Art. VI, Sec. 19

13. The justices of the appellate division in each department shall have power to appoint * * * a clerk.

By the Comptroller
Art. V, Sec. 4

14. The comptroller shall appoint the clerks of the prisons.
(1846, V, 4, as amended, 1869)

By the Superintendent of Public Works
Art. V, Sec. 3

15. The superintendent of public works shall appoint not more than three assistant superintendents * * *. Any vacancy in the office of any assistant superintendent shall be filled for the remainder of the term for which he was appointed by the superintendent of public works.
(1846, V, 3, as amended, 1869)

Art. V, Sec. 3

16. All other persons employed in the care and management of the canals, except collectors of tolls, and those in the department of the state engineer and surveyor, shall be appointed by the superintendent of public works.
(1846, V, 3, as amended, 1869)

By the Superintendent of State Prisons
Art. V, Sec. 4

17. [The superintendent of state prisons] shall appoint the agents, wardens, physicians and chaplains of the prisons. The agent and warden of each prison shall appoint all other officers of such prison, except the clerk, subject to the approval of the same by the superintendent.
(1846, V, 4, as amended, 1869)

Merit System in Civil Service
Art. V, Sec. 9

Section 4. Appointments and promotions in the civil service of the state, and of all the civil divisions thereof, including cities and villages, shall be made according to merit and fitness to be ascertained, so far as practicable, by examinations, which, so far as practicable, shall be competitive; provided, however, that honorably discharged soldiers and sailors from the army and navy of the United States in the late civil war, who are citizens and residents of this state, shall be entitled to preference in appointment and promotion, without regard to their standing on any list from which such appointment or promotion may be made.

Election or Appointment of Statutory Officers—
County
Art. X, Sec. 2

Section 5. All county officers, whose election or appointment is not provided for by this constitution, shall be elected by the electors of the respective counties or appointed by the boards of supervisors, or other county authorities, as the legislature shall direct.
(1846, X, 2, without change)

City, Town and Village
Art. X, Sec. 2

2. All city, town and village officers, whose election or appointment is not provided for by this constitution, shall be elected by the electors of such cities, towns and villages, or of some division thereof, or appointed by such authorities thereof, as the legislature shall designate for that purpose.
(1846, X, 2, without change)

3. All other officers, whose election or appointment is not provided for by this Constitution, and all officers, whose

offices may hereafter be created by law, shall be elected by the people, or appointed as the legislature may direct.
(1846, X, 2, without change; see IV, 15)

Judicial Officers in Cities
Art. VI, Sec. 17

4. All other judicial officers in cities, whose election or appointment is not otherwise provided for in this article shall be chosen by the electors of such cities, or appointed by some local authority thereof.
(1846, VI, 18, as amended, 1869; see 1846, VI, 17, 18)

Judicial Officers
Art. VI, Sec. 18

5. Except as herein otherwise provided, all judicial officers shall be elected or appointed at such times and in such manner as the legislature may provide.
(1846, VI, 19, as amended, 1869, see 1846, VI, 18)

Succession to Office of Governor
Art. IV, Sec. 6

Section 6. In case of the impeachment of the governor, or his removal from office, death, inability to discharge the powers and duties of the said office, resignation, or absence from the state, the powers and duties of the office shall devolve upon the lieutenant-governor for the residue of the term, or until the disability shall cease.
(1777, XX; 1821, III, 6; 1846, VI, 6)

Art. IV, Sec. 7

2. If during a vacancy of the office of governor, the lieutenant-governor shall be impeached, displaced, resign, die or become incapable of performing the duties of his office, or be absent from the state, the president of the senate shall act as governor until the vacancy be filled or the disability shall cease; and if the president of the senate for any of the above causes shall become incapable of performing the duties pertaining to the office of governor, the speaker of the assembly shall act as governor until the vacancy be filled or the disability shall cease.
(1777, XXI; 1821, III, 7; 1846, IV, 7)

Installation

Section 7. [Before any person shall be competent to exercise the powers of any office to which he shall be elected or appointed, he shall take the oath and give bond for security whenever oath or bond are required as follows:]

General Oath
Art. XIII, Sec. 1

2. Members of the legislature, and all officers, executive and judicial, except such inferior officers as shall be by law exempted, shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of New York, and that I will faithfully discharge the duties of the office of....., according to the best of my ability."
(1821, VI; 1846, XII, 1)

And all such officers who shall have been chosen at any election shall, before they enter on the duties of their respective offices, take and subscribe the oath or affirmation above prescribed, together with the following addition thereto, as part thereof:

"And I do further solemnly swear (or affirm) that I have not directly or indirectly paid, offered or promised to pay, contributed or offered or promised to contribute any money or other valuable thing as a consideration or reward for the giving or withholding a vote at the election at which I was elected

to said office, and have not made any promise to influence the giving or withholding any such vote," and no other oath, declaration or test shall be required as the qualification for any office of public trust.

(Added, 1874)

Giving Bonds for Security
Art. V, Sec. 3

3. [The superintendent of public works] shall be required by law to give security for the faithful execution of his office before entering upon the duties thereof.

(1846, V, 3, as amended, 1869)

Art. V, Sec. 4

4. [The superintendent of state prisons] shall give security in such amount, and with such sureties as shall be required by law for the faithful discharge of his duties.

(1846, V, 4, as amended, 1869)

5. [The sheriffs are required to give security for the faithful performance of their duties.]

Additional Security
Art. X, Sec. 1

6. [Sheriffs] may be required by law to renew their security from time to time.

(1821, IV, 8; 1846, X, 1)

Art. VI, Sec. 13

7. Before the trial of an impeachment the members of the court shall take an oath or affirmation truly and impartially to try the impeachment according to the evidence.

(1777, XXXIII; 1821, V, 2; 1846, VI, 1)

Personal Rights

Section 8. [Persons who shall be elected or appointed to offices mentioned below and who qualify by taking oath and giving bond as required, shall have the following rights as officers.]

Legislators
Term
Art. III, Sec. 2

2. [Senators shall have the right to hold office] for two years.

[Members of the assembly shall have the right to hold office] for one year.

(1777, IV, XI; 1821, I, 2; 1846, III, 2)

Salaries
Art. III, Sec. 6

3. Each member of the legislature shall receive for his services an annual salary of one thousand five hundred dollars. The members of either house shall also receive the sum of one dollar for every ten miles they shall travel in going to and returning from their place of meeting, once in each session, on the most usual route. Senators, when the senate alone is convened in extraordinary session, or when serving as members of the court for the trial of impeachments, and such members of the assembly, not exceeding nine in number, as shall be appointed managers of an impeachment, shall receive an additional allowance of ten dollars a day.

(1821, I, 9; 1846, III, 6)

Privileges
Art. III, Sec. 12

4. For any speech or debate in either house of the legislature, the members shall not be questioned in any other place.

(1846, III, 12)

Governor
Term
Art. IV, Sec. 1
Salary
Art. IV, Sec. 4

5. [The governor shall have the right to] hold his office for two years. * * * He shall receive for his services an annual salary of ten thousand dollars, and there shall be provided for his use a suitable and furnished executive residence.

(1777, XVIII; 1821, III, 1, 4; 1846, IV, 1, 4; as amended 1874)

Lieutenant-Governor
Term
Art. IV, Sec. 1
Salary
Art. IV, Sec. 8

6. [The lieutenant-governor shall have the right to hold office] for the same term [as the governor]. * * * [He] shall receive for his services an annual salary of five thousand dollars, and shall not receive or be entitled to any other compensation, fee or perquisite, for any duty or service he may be required to perform by the constitution or by law.

(1777, XX; 1821, III, 1; 1846, IV, 1, 8; as amended 1874)

Secretary of State, Comptroller, Treasurer, Attorney-General, State Engineer
Term
Art. V, Sec. 1
Salary
Art. V, Sec. 1

7. [The secretary of state, comptroller, treasurer, attorney-general, state engineer and surveyor shall have the right to] hold their offices for two years, except as provided in [article XIV, section 5]. Each of the officers in this [paragraph] named * * *, shall at stated times during his continuance in office, receive for his services a compensation which shall not be increased or diminished during the term for which he shall have been elected; nor shall he receive to his use any fees or perquisites of office or other compensation.

(1846, V, 1, 2)

Superintendent of Public Works
Term
Art. V, Sec. 3

8. [The superintendent of public works shall have the right to] hold his office until the end of the term of the governor by whom he was nominated, and until his successor is appointed and qualified. He shall receive a compensation to be fixed by law.

(1846, V, 3, as amended 1869)

Assistant Superintendent of Public Works
Term
Art. V, Sec. 3
Salary
Art. V, Sec. 3

9. [The assistant superintendents of public works] shall [have the right to] hold their offices for three years, subject to suspension or removal by the superintendent of public works, whenever, in his judgment, the public interest shall so require. [They] shall receive for their services a compensation to be fixed by law.

(1846, V, 3, as amended 1869)

Superintendent of State Prisons
Term
Art. V, Sec. 4

10. [The superintendent of state prisons shall have the right to] hold his office for five years, unless sooner removed.

(1846, V, 4, as amended 1869)

Judges of Court of Appeals
Term
Art. VI, Sec. 7

11. The official terms of the chief judge and associate judges [of the court of appeals] shall be fourteen years from and including the first day of January next and after their election.

(1869, VI, 2; 1894, VI, 2)

Presiding Justice of Appellate Division
Term
Art. VI, Sec. 2

12. [The presiding justice of the appellate division shall be designated by the governor to] act as such during his term of office.

(1846, VI, 6; 1869, VI, 7)

Justices of Appellate Division
Term
Art. VI, Sec. 2

13. The other justices [of the appellate division] shall be designated for terms of five years or the unexpired portions of their respective terms of offices, if less than five years.

(1846, VI, 6; 1869, VI, 7)

Justices of the Supreme Court
Term
Art. VI, Sec. 4

14. The official terms of the justices of the supreme court shall be fourteen years from and including the first day of January next after their election. * * *

(1894, VI, 4; see 1777, XXIV; 1821, V, 3; 1846, VI, 4)

Salaries of Judges and Justices
Art. VI, Sec. 12

15. Each justice of the supreme court shall receive from the state the sum of ten thousand dollars per year. Those assigned to the appellate divisions in the third and fourth departments shall each receive in addition the sum of two thousand dollars, and the presiding justices thereof the sum of

two thousand five hundred dollars per year. Those justices elected in the first and second judicial departments shall continue to receive from their respective cities, counties or districts, as now provided by law, such additional compensation as will make their aggregate compensation what they are now receiving. Those justices elected in any judicial department other than the first or second, and assigned to the appellate divisions of the first or second departments shall, while so assigned, receive from those departments respectively, as now provided by law, such additional sum as is paid to the justices of those departments. A justice elected in the third or fourth department assigned by the appellate division or designated by the governor to hold a trial or special term in a judicial district other than that in which he is elected shall receive in addition ten dollars per day for expenses while actually so engaged in holding such term, which shall be paid by the state and charged upon the judicial district where the service is rendered. The compensation herein provided shall be in lieu of and shall exclude all other compensation and allowance to said justices for expenses of every kind and nature whatsoever. The provisions of this section shall apply to the judges and justices now in office and to those hereafter elected.

(1909, VI, 12; 1846, VI, 7; 1869, VI, 14)

Art. VI, Sec. 20

16. No judicial officer, except justices of the peace, shall receive to his own use any fee or perquisite of office.

(1846, VI, 20; 1869, VI, 21)

County Judges
Term
Art. VI, Sec. 14

17. [The term of office of the county judges shall be] six years from and including the first day of January following their election.

(1777, XXIV, XXVIII; 1821, V, 6; 1846, VI, 15; 1869, VI, 14)

Salary
Art. VI, Sec. 14

His salary shall be established by law, payable out of the county treasury.

(1846, VI, 15; 1869, VI, 14)

Surrogates
Term
Art. VI, Sec. 15

18. [The] terms of office [of surrogates] shall be six years, except in the county of New York, where they shall continue to be fourteen years.

(1846, VI, 15, as amended 1869)

Salary
Art. VI, Sec. 15

When the surrogate shall be elected as a separate officer his salary shall be established by law, payable out of the county treasury.

(1846, VI, 15, as amended 1869)

Guaranty to County Judge and Surrogate
Art. VI, Sec. 15

The compensation of any county judge or surrogate shall not be increased or diminished during his term of office.

(1846, VI, 15, as amended 1869)

City Courts
Term
Art. VI, Sec. 17

19. Justices of the peace and District Court justices [shall hold] for such terms * * * as are or shall be prescribed by law.

(1846, VI, 18, as amended 1869)

Justices of the Peace in Towns
Term
Art. VI, Sec. 17

20. [The] term of office [of justices of the peace in towns] shall be four years. In case of an election to fill a vacancy occuring before the expiration of a full term, they shall hold for the residue of the unexpired term.

(1821, IV, 7; 1846, VI, 17; 1869; 18)

Time of Expiration of Terms
Art. XII, Sec. 3

21. The term of every city [and county officer, set forth in article II, section 7, paragraph 7] shall expire at the end of an odd-numbered year.

Clerks, Court of Appeals and Appellate Division
Salary
Art. VI, Sec. 19

22. The clerk of the court of appeals and the clerks of the appellate division shall receive compensation to be established by law and paid out of the public treasury.

(1846, VI, 19; 1869, VI, 20)

General Provisions
Term
Art. X, Sec. 3

23. When the duration of any office is not provided by this constitution, it may be declared by law, and if not so declared, such office shall be held during the pleasure of the authority making the appointment.

(1821, IV, 16; 1846, X, 3)

Salary
Art. X, Sec. 9

24. Each of the * * * state officers named in the constitution, shall, during his continuance in office, receive a compensation, to be fixed by law, which shall not be increased or diminished during the term for which he shall have been elected or appointed; nor shall he receive to his use any fees or perquisites of office or other compensation.

(1846, X, 9; added 1874)

Disabilities of Officers

Section 9. [Persons who are elected or appointed to the offices mentioned below and who qualify shall be under the following disabilities]:

Members of the Legislature
Art. III, Sec. 7

2. No member of the legislature shall receive any civil appointment within this state, or the senate of the United States, from the governor, the governor and senate, or from the legislature, or from any city government, during the time for which he shall have been elected; and all such appointments and all votes given for any such member for any such office or appointments shall be void. * * * And if any person shall, after his election as a member of the legislature, be elected to congress, or appointed to any office, civil or military, under the government of the United States, or under any city government, his acceptance thereof shall vacate his seat.

Art. III, Sec. 8

(1821, I, 10, 11; 1846, III, 7, 8. See 1777, XXII)

Judges and Justices
Art. VI, Sec. 10

3. The judges of the court of appeals and the justices of the supreme court shall not hold any other office or public trust. All votes for any of them, for any other than a judicial office, given by the legislature or the people, shall be void.

(1821, V, 7; 1846, VI, 8; 1869, VI, 9. See 1777, XXV)

Art. VI, Sec. 2

4. No justice of the appellate division shall, within the department to which he may be designated to perform the duties of an appellate justice, exercise any of the powers of a justice of the supreme court, other than those of a justice out of court, and those pertaining to the appellate division or to the hearing and decision of motions submitted by consent of counsel, but any such justice when not actually engaged in performing the duties of such appellate justice in the department to which he is designated, may hold any term of the supreme court and exercise any of the powers of a justice of the supreme court in any county or judicial district in any other department of the state.

(1894, VI, 2; amended 1905; see 1846, VI, 6; 1869, VI, 7)

Art. VI, Sec. 20

5. Nor shall any judge of the court of appeals, or justice of the supreme court, or any county judge or surrogate hereafter elected in a county having a population exceeding one

hundred and twenty thousand, practice as an attorney or counselor in any court of record in this state, or act as referee. The legislature may impose a similar prohibition upon county judges and surrogates in other counties.

(1846, VI, 21; added 1869)

Art. VI, Sec. 15

6. No county judge or surrogate shall hold office longer than until and including the last day of December next after he shall be seventy years of age.

(1846, VI, 13, 15; as amended 1869)

Art. VI, Sec. 12

7. No person shall hold the office of judge or justice of any court longer than until and including the last day of December next after he shall be seventy years of age.

(1846, VI, 13; as amended 1869; see 1777, XXIV; 1821, V, 3)

Art. VI, Sec. 3

8. No judge or justice shall sit in the appellate division or in the court of appeals in review of a decision made by him or by any court of which he was at the time a sitting member.

(1846, VI, 8; as amended 1869; see 1777, XXXII; 1821, V, 1)

Art. VI, Sec. 13

9. No judicial officer shall exercise his office, after articles of impeachment against him shall have been preferred to the senate, until he shall have been acquitted.

(1777, XXXII; 1821, V, 1; 1846, VI, 1)

Sheriffs
Art. X, Sec. 1

10. Sheriffs shall hold no other office, and be ineligible for the next term after the termination of their offices.

(1777, XXVI; 1821, IV, 8; 1846, X, 1)

General Provisions
Art. X, Sec. 5

11. No person appointed to fill a vacancy [in an elective office] shall hold his office by virtue of such appointment longer than the commencement of the political year next succeeding the first annual election after the happening of the vacancy.

(1846, X, 5)

Art. X, Sec. 9

12. No officer whose salary is fixed by the Constitution shall receive any additional compensation.

(1846, X, 9; added 1874)

Art. XIII, Sec. 5

13. No public officer, or person elected or appointed to a public office, under the laws of this state, shall directly or indirectly ask, demand, accept, receive or consent to receive for his own use or benefit or for the use or benefit of another, any free pass, free transportation, franking privilege or discrimination in passenger, telegraph or telephone rates, from any person or corporation, or make use of the same himself or in conjunction with another.

Criminal Prosecution
Art. XIII, Sec. 2

14. Any person holding office under the laws of this state, who, except in payment of his legal salary, fees or perquisites, shall receive or consent to receive, directly or indirectly, anything of value or of personal advantage, or the promise thereof, for performing or omitting to perform any official act, or with the express or implied understanding that his official action or omission to act is to be in any degree influenced thereby, shall be deemed guilty of a felony. This [paragraph] shall not affect the validity of any existing statute in relation to the offense of bribery.

(1846, XV, 2; added 1874)

Removal from Office

Treasurer
Art. V, Sec. 7

Section 10. The treasurer may be suspended from office by the governor, during the recess of the legislature, and until thirty days after the commencement of the next session of the legislature, whenever it shall appear to him that such treasurer has, in any particular, violated his duty.

(1846, V, 7)

Superintendent Public Works
Art. V, Sec. 3

2. [The superintendent of public works] may be suspended or removed from office by the governor, whenever, in his judgment, the public interest shall so require; but in case of the removal of such superintendent of public works from office, the governor shall file with the secretary of state a statement of the cause of such removal, and shall report such removal and the cause thereof to the legislature at its next session.

(1846, V, 3; as amended 1869)

Superintendent Prisons
Art. V, Sec. 4

3. The governor may remove the superintendent [of prisons] for any cause at any time, giving to him a copy of the charges against him, and an opportunity to be heard in his defense.

(1846, V, 3; as amended 1869)

State Boards
Art. VIII, Sec. 12

4. Any member [of the state board of charities, the state commission in lunacy, and the state commission of prisons] may be removed from office by the governor for cause, an opportunity having been given him to be heard in his defense.

Assistants
Art. V, Sec. 3

5. [The assistant superintendents, may be suspended or removed] by the superintendent of public works whenever, in his judgment, the public interest shall so require * * * but in case of the suspension or removal of any such assistant superintendent by him, he shall at once report to the governor, in writing, the cause of such removal.

(1846, V, 3; as amended 1869)

Art. V, Sec. 3

6. All other persons * * * appointed by the superintendent of public works [shall] be subject to suspension or removal by him.

(1846, V, 3; as amended 1869)

County Officers
Art. X, Sec. 1

7. The governor may remove any officer, in [article III, section 2, paragraph 8,] mentioned, within the term for which he shall have been elected; giving to such officer a copy of the charges against him, and an opportunity of being heard in his defense.

(1821, IV, 8; 1846, X, 1)

General Provisions
Art. X, Sec. 7

8. Provision shall be made by law for the removal for misconduct or malversation in office of all officers, except judicial, whose powers and duties are not local or legislative and who shall be elected at general elections, and also for suppying vacancies created by such removal.

(1846, X, 7)

Judges
Art. VI, Sec. 11

9. Judges of the court of appeals and justices of the supreme court, may be removed by concurrent resolution of both houses of the legislature, if two-thirds of all the members elected to each house concur therein. All other judicial officers, except justices of the peace and judges or justices of inferior courts not of record, may be removed by the senate, on the recommendation of the governor, if two-thirds of all the members elected to the senate concur therein. But

no officer shall be removed by virtue of this [paragraph] except for cause, which shall be entered on the journals, nor unless he shall have been served with a statement of the cause alleged, and shall have had an opportunity to be heard. On the question of removal, the yeas and nays shall be entered on the journal.

(1846, VI, 11; see 1821, I, 13)

District Attorney Art. XIII, Sec. 6

10. Any district attorney who shall fail faithfully to prosecute a person charged with the violation in his county of any provision of [article III, section 9, paragraphs 13 and 14, or of article XIII, sections 16 and 17] which may come to his knowledge, shall be removed from office by the governor, after due notice and an opportunity of being heard in his defense.

(1846, XV, 4; added, 1874)

Justices of Peace Art. VI, Sec. 17

11. Justices of the peace and judges or justices of inferior courts not of record, and their clerks may be removed for cause, after due notice and an opportunity of being heard by such courts as are or may be prescribed by law.

(1846, VI, 17; 1869, VI, 18; see 1821, IV, 7)

Court Officers Art. VI, Sec. 7

12. [The court of appeals shall have power] to remove [its reporter, clerk and attendants]

(1846, VI, 2; as amended 1869; see 1846, VI, 8, 19)

Art. VI, Secs. 2, 19

13. [The appellate division of the supreme court shall have power to remove the reporter and the clerk.]

Impeachment Art. VI, Sec. 13

14. [Any officer may be impeached].

(1777, XXXIII; 1821, V, 2; 1846, VI, 1)

Ouster Art. XIII, Sec. 5

15. A person who violates any provision of [article III, section 9, paragraph 13] shall be deemed guilty of a misdemeanor, and shall forfeit his office at the suit of the attorney-general.

Office Declared Vacant Art. X, Sec. 8

16. The legislature may declare the cases in which any office shall be deemed vacant when no provision is made for that purpose in this Constitution.

(1846, X, 8)

Sheriff's Office Art. X, Sec. 1

17. The offices [of sheriffs] shall be deemed vacant [in default of giving the new security required under article III, section 7, paragraph 6].

(1821, IV, 8; 1846, X, 1)

ARTICLE IV

THE LEGISLATURE

Organization

Legislature Composition

Section 1. [The legislature shall consist of two chambers —the Senate and the Assembly].

Senate Composition Art. III, Sec. 2

Section 2. The senate shall consist of fifty members, except as * * * provided [in article II, section 9].

(1777, X; amendment of 1801; 1821, I, 2; 1846, III, 2)

President Art. IV, Sec. 7

2. [The lieutenant-governor] shall be president of the senate, but shall have only a casting vote therein.

(1777, XX; 1821, III, 7; 1846, IV, 7)

Temporary President Art. III, Sec. 10

3. The senate shall choose a temporary president to preside in the case of the absence or impeachment of the lieutenant-governor, or when he shall refuse to act as president, or shall act as Governor.

(1777, XXI; 1821, I, 3; 1846, III, 10)

Assembly Composition Art. III, Sec. 2

Section 3. The assembly shall consist of one hundred and fifty members.

(1777, IV; amendment of 1801; 1821, I, 2; 1846, III, 2)

Impeachment Art. VI, Sec. 13

2. The assembly shall have the power of impeachment, by a vote of a majority of all the members elected.

(1777, XXXIII; 1821, V, 2; 1846, VI, 1)

Rules Regulating Procedure

Section 4. [Each house shall be governed in its official action by the following rules]:

Quorum Art. III, Sec. 10

1. A majority of each house shall constitute a quorum to do business.

(1777, IX; 1821, I, 3; 1846, III, 10)

Rules of Procedure Art. III, Sec. 10

2. [In so far as not herein provided] each house shall determine the rules of its own proceedings.

(1821, I, 3; 1846, III, 10; see 1777, IX)

Record Art. III, Sec. 11

3. Each house shall keep a journal of its proceedings, and publish the same, except such parts as may require secrecy.

(1777, XV; 1821, I, 4; 1846, III, 11)

Sessions Public Art. III, Sec. 11

4. The doors of each house shall be kept open, except when the public welfare shall require secrecy.

(1777, XV; 1821, I, 4; 1846, III, 11)

Adjournment Art. III, Sec. 11

5. Neither house shall, without the consent of the other, adjourn for more than two days.

(1777, XIV; 1821, I, 4; 1846, III, 11)

Political Year Art. X, Sec. 6

Section 5. The political year and the legislative term shall begin on the first day of January.

(1821, I, 14; 1846, X, 6)

Regular Meeting Art. X, Sec. 6

2. The legislature shall, every year, assemble on the first Wednesday in January.

(1821, I, 14; 1846, X, 6)

Special Session Art. IV, Sec. 4

3. [The legislature shall assemble in extraordinary session when convened by the governor.]

Rules Regulating the Enactment of Laws

Enacting Clause Art. III, Sec. 14

Section 6. The enacting clause of all bills shall be, "The People of the State of New York, represented in Senate and Assembly, do enact as follows," and no law shall be enacted except by bill.

(1777, XXXI; 1846, III, 14)

Introduction of Bills Art. III, Sec. 13

Section 7. Any bill may originate in either house of the legislature.

(1821, I, 8; 1846, III, 13)

Bills Must Be Printed and Laid on Desks of Members
Art. III, Sec. 15

Section 8. No bill shall be passed or become a law unless it shall have been printed and laid upon the desks of the members, in its final form, at least three calendar legislative days prior to its final passage, unless the governor shall have certified to the necessity of its immediate passage, under his hand and the seal of the state.

No Amendment on Last Reading
Art. III, Sec. 15

Section 9. Upon the last reading of a bill, no amendment thereof shall be allowed, and the question upon its final passage shall be taken immediately thereafter and the yeas and nays entered on the journal.

(1846, III, 15)

Majority Required to Pass Bill
Art. III, Sec. 15

Section 10. [No] bill [shall] be passed or become a law, except by the assent of a majority of the members elected to each branch of the legislature.

(1846, III, 15)

Amendment by Other House
Art. III, Sec. 13

Section 11. All bills passed by one house may be amended by the other.

(1821, I, 8; 1846, III, 13)

Veto
Art. IV, Sec. 9

Section 12. Every bill which shall have passed the senate and assembly shall, before it becomes a law, be presented to the governor; if he approves, he shall sign it; but if not, he shall return it with his objections to the house in which it shall have originated, which shall enter the objections at large on the journal, and proceed to reconsider it. If after such reconsideration, two-thirds of the members elected to that house shall agree to pass the bill, it shall be sent together with the objections, to the other house by which it shall likewise be reconsidered; and if approved by two-thirds of the members elected to that house, it shall become a law notwithstanding the objections of the governor. In all such cases, the votes in both houses shall be determined by yeas and nays, and the names of the members voting shall be entered on the journal of each house respectively. If any bill shall not be returned by the governor within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the legislature shall, by their adjournment, prevent its return, in which case it shall not become a law without the approval of the governor. No bill shall become a law after the final adjournment of the legislature, unless approved by the governor within thirty days after such adjournment.

(1821, I, 12; 1846, IV, 9; amended 1874; see 1777, III)

Veto of Money Bills
Art. IV, Sec. 9

2. If any bill presented to the governor contain several items of appropriation of money, he may object to one or more of such items, while approving of the other portion of the bill. In such case, he shall append to the bill, at the time of signing it, a statement of the items to which he objects; and the appropriation so objected to shall not take effect. If the legislature be in session, he shall transmit to the house in which the bill originated a copy of such statement, and the items objected to shall be separately considered. If on reconsideration one or more of such items be approved by two-thirds of the members elected to each house, the same shall be part of the law, notwithstanding the objections of the governor. All the provisions of this section, in relation to bills not approved by the governor, shall apply in cases in which he shall withhold his approval from any items contained in a bill appropriating money.

(1846, IV, 9, as amended 1874)

Re-enactment
Art. III, Sec. 17

Section 13. No act shall be passed which shall provide that any existing law, or any part thereof, shall be made or deemed a part of said act, or which shall enact that any existing law, or part thereof, shall be applicable, except by inserting it in such act.

(1846, III, 17; added 1874)

Private and Local Bills
Art. III, Sec. 16

Section 14. No private or local bills, which may be passed by the legislature, shall embrace more than one subject, and that shall be expressed in the title.

(1846, III, 16)

Local and Private Bills Reported by a Commission
Art. III, Sec. 23

Section 15. Sections [13 and 14] of this article shall not apply to any bill, or the amendments to any bill, which shall be reported to the legislature by commissioners who have been appointed pursuant to law to revise the statutes.

(1846, III, 25; added 1874)

Appropriation Bills
Art. III, Sec. 20

Section 16. The assent of two-thirds of the members elected to each branch of the legislature shall be requisite to every bill appropriating the public moneys or property for local or private purposes.

(1821, VII, 9; 1846, I, 9)

Art. III, Sec. 22

2. No provision or enactment shall be embraced in the annual appropriation or supply bill, unless it relates specifically to some particular appropriation in the bill; and any such provision or enactment shall be limited in its operation to such appropriation.

Art. III, Sec. 21

3. Every * * * law making a new appropriation, or continuing or reviving an appropriation, shall distinctly specify the sum appropriated, and the object to which it is to be applied; and it shall not be sufficient for such law to refer to any other law to fix such sum.

(1846, VII, 8)

Creating Indebtedness
Art. VII, Sec. 4

Section 17. [Any law which provides for the contracting of debts by or on behalf of the state, except those set forth in sections 36 and 37 of this article shall be] for some single work or object, to be distinctly specified therein; and such law shall impose and provide for the collection of a direct annual tax to pay, and sufficient to pay, the interest on such debt as it falls due, and also to pay and discharge the principal of such debt within fifty years from the time of the contracting thereof.

(1846, VII, 12)

Art. VII, Sec. 4

2. No such law shall take effect until it shall, at a general election, have been submitted to the people, and have received a majority of all the votes cast for and against it at such election.

(1846, VII, 12)

3. On the final passage of such bill in either house of the legislature, the question shall be taken by ayes and nays to be duly entered on the journals thereof, and shall be: "Shall this bill pass, and ought the same to receive the sanction of the people?"

(1846, VII, 12)

Art. VII, Sec. 4

4. The legislature may at any time, after the approval of such law by the people, if no debt shall have been contracted in pursuance thereof, repeal the same; and may at any time, by law, forbid the contracting of any further debt

or liability under such law; but the tax imposed by such act, in proportion to the debt and liability which may have been contracted, in pursuance of such law, shall remain in force and irrepealable, and be annually collected, until the proceeds thereof shall have made the provision hereinbefore specified to pay and discharge the interest and principal of such debt and liability. The money arising from any loan or stock creating such debt or liability shall be applied to the work or object specified in the act authorizing such debt or liability, or for the repayment of such debt or liability, and for no other purpose whatever. No such law shall be submitted to be voted on, within three months after its passage, or at any general election when any other law, or any bill, shall be submitted to be voted for or against.

(1846, VII, 12)

Taxation
Art. III, Sec. 24

Section 18. Every law which imposes, continues or revives a tax shall distinctly state the tax and the object to which it is to be applied, and it shall not be sufficient to refer to any other law to fix such tax or object.

(1846, III, 20; added 1874)

Art. III, Sec. 25

2. On the final passage in either house of the legislature of any act which imposes, continues or revives a tax, or creates a debt or charge, or makes, continues or revives any appropriation of public or trust money or property, or releases, discharges or commutes any claim or demand of the state, the question shall be taken by yeas and nays, which shall be duly entered upon the journals, and three-fifths of all the members elected to either house shall, in all such cases, be necessary to constitute a quorum therein.

(1846, III, 2; added 1874)

City Laws
Art. XII, Sec. 2

Section 19. Laws relating to the property, affairs or government of cities, and the several departments thereof, are divided into general and special city laws; general city laws are those which relate to all the cities of one or more classes; special city laws are those which relate to a single city, or to less than all the cities of a class. Special city laws shall not be passed except in conformity with the provisions of this section.

Art. XII, Sec. 2

2. After any bill for a special city law, relating to a city, has been passed by both branches of the legislature, the house in which it originated shall immediately transmit a certified copy thereof to the mayor of such city, and within fifteen days thereafter the mayor shall return such bill to the house from which it was sent, or if the session of the legislature at which such bill was passed has terminated, to the governor, with the mayor's certificate thereon, stating whether the city has or has not accepted the same.

Art. XII, Sec. 2

3. In every city of the first class, the mayor, and in every other city, the mayor and the legislative body thereof, concurrently shall act for such city as to such bill; but the legislature may provide for the concurrence of the legislative body in cities of the first class. The legislature shall provide for a public notice and opportunity for a public hearing concerning any such bill in every city to which it relates, before action thereon. Such a bill, if it relates to more than one city, shall be transmitted to the mayor of each city to which it relates, and shall not be deemed accepted unless accepted as herein provided, by every such city. Whenever any such bill is accepted as herein provided, it shall be subject, as are other bills, to the action of the governor. Whenever, during

the session at which it was passed, any such bill is returned without the acceptance of the city or cities to which it relates, or within such fifteen days not returned, it may nevertheless again be passed by both branches of the legislature, and it shall then be subject as are other bills, to the action of the governor. In every special city law which has been accepted by the city or cities to which it relates, the title shall be followed by the words "accepted by the city," or "cities," as the case may be; in every such law which is passed without such acceptance, by the words "passed without the acceptance of the city," or "cities," as the case may be.

Powers and Duties

Legislative Power
Art. III, Sec. 1

Section 20. The legislative power of this state shall be vested in the senate and assembly.

(1777, II; 1821, I, 1; 1846, III, 1)

Duties Pertaining to

Section 21. [It shall be the duty of the legislature to make laws the purpose of which shall be:]

Suffrage
Art. II, Sec. 4

(1) Ascertaining by proper proofs the citizens who shall be entitled to the right of suffrage hereby established and for the registration of voters.

(1821, II, 3; 1846, II, 4)

Art. II, Sec. 2

(2) Excluding from the right of suffrage all persons convicted of bribery or of any infamous crime.

(1821, II, 2; 1846, II, 2)

Art. III, Sec. 4

(3) [Altering the senate districts] at the first regular session after the return of every [census] enumeration [so] that each senate district shall contain as nearly as may be an equal number of inhabitants, excluding aliens, and [shall] be in as compact form as practicable.

(1777, XII; 1821, I, 6; 1846, III, 4; see amendment of 1801)

Apportionment
Art. III, Sec. 5

(4) [Reapportioning] the members of the assembly * * * at the first regular session after the return of every [census] enumeration, among the several counties of the state, as nearly as may be according to the number of their respective inhabitants, excluding aliens.

(1777, V; 1821, I, 7; 1846, III, 5)

Judicial Department
Art. VI, Sec. 2

(5) [Dividing] the state into four judicial departments.

(1846, VI, 7, as amended 1869; 1846, VI, 6)

Administrative Organization
Art. VIII, Sec. 11

(6) [Providing for a state board of charities, a state commission of lunacy, and a state commission of prisons].

Art. XII, Sec. 1

(7) [Providing] for the organization of cities and incorporated villages, and [restricting] their powers of taxation, assessment, borrowing money, contracting debt, and loaning their credit, so as to prevent abuses in assessments and in contracting debts by municipal corporations.

(1846, VIII, 9)

Choice of Officers
Art. X, Sec. 4

(8) [Prescribing] the time of electing all officers named in [article III, section 2, paragraph 8].

(1846, X, 2)

Filling Vacancies in Office
Art. X, Sec. 5

(9) [Providing] for filling vacancies in office.

(1846, X, 5)

Art. V, Sec. 9

(10) [Providing for making appointments and promotions in the civil service of the state, and to all civil divisions thereof, including cities and villages, according to merit and fitness].

Art. X, Sec. 7

(11) [Providing for the removals set forth in article III, section 10, paragraph 8].
(1846, X, 7)

Local Ordinances and Administrative Regulations
Art. III, Sec. 27

(12) [Conferring by general laws] upon the boards of supervisors of the several counties of the state further powers of local legislation and administration as [it] may from time to time deem expedient, and in counties which now have, or may hereafter have, county auditors or other fiscal officers, authorized to audit bills, accounts, charges, claims or demands against the county, [it] may confer such powers upon said auditors, or fiscal officers, as [it] may, from time to time, deem expedient.
(1846, III, 23; as amended 1874 and 1909; see 1846, III, 17)

Incorporation
Art. III, Sec. 18

(13) [Providing by general laws] for the cases enumerated in [article IV, section 28] and for all other cases which in its judgment may be provided for by general laws.
(1846, III, 18; added 1874)

Publicity
Art. VI, Sec. 21

(14) [Providing] for the speedy publication of all statutes.
(1846, VI, 22; 1869, VI, 23)

Art. VI, Sec. 21

(15) [Regulating] the reporting of decisions of the courts.
(1846, VI, 22; 1869, VI, 23)

Art. XII, Sec. 2

(16) [Providing] for a public notice and opportunity for a hearing concerning any [bills submitted to the mayor or council of the city according to the provisions of article IV, section 19.]

Expenses of Government
Art. VII, Sec. 9

(17) [Providing] annually, by equitable taxes * * * for the expenses of the superintendence and repairs of the canals.
(See 1846, VII, 1)

Art. XIII, Sec. 6

(18) [Providing for payment by the state for] expenses which shall be incurred by any county in investigating and prosecuting any charge of bribery or attempting to bribe any person holding office under the laws of this state, in any county thereof, or of receiving bribes by any such person in said county, said expenses to be a charge against the state.
(1846, XV, 4; added 1874)

Regulation of Banking
Art. VIII, Sec. 6

(19) [Providing] for the registry of all bills or notes issued or put in circulation as money, and [requiring] ample security for the redemption of the same in specie.
(1846, VIII, 6)

Art. VIII, Sec. 4

(20) [Conforming, by general laws] all charters of savings banks, or institutions for savings, to a uniformity of powers, rights and liabilities.
(1846, VIII, 4; as amended 1874)

Prison Labor
Art. III, Sec. 29

(21) [Providing] for the occupation and employment of prisoners sentenced to the several state prisons, penitentiaries, jails and reformatories of the state, and [that] no person in any such prison, penitentiary, jail or reformatory shall be required or allowed to work, while under sentence thereto, at

any trade, industry or occupation wherein or whereby his work, or the product or profit of his work, shall be farmed out, contracted, given or sold to any person, firm or association, or corporation [but] this [paragraph] shall not be construed to prevent the legislature from providing that convicts may work for, and that the products of the labor may be disposed of to the state or any political division thereof, or for or to any public institution owned, managed and controlled by the state, or any political division thereof.

Violation of Constitutional Provision
Art. I, Sec. 9

(22) [Preventing] offenses against any of the provisions of [article IV, sections 26 and 27.]

Common Schools
Art. IX, Sec. 1

(23) [Providing] for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated.

Art. IX, Sec. 3

(24) [Appropriating] the sum of twenty-five thousand dollars of the revenues of the United States deposit fund * * * each year * * * to * * * the capital of the * * * common school fund.
(1846, IX, 1)

Art. XI, Sec. 3

(25) [Making] at each session * * * sufficient appropriation for the maintenance [of the militia].

Amendment
Art. XIV, Sec. 1

(26) [Submitting to the people for approval such amendments to the constitution as are mentioned in article XII, section 1.]
(1821, VIII, 1; 1846, XIII, 1)

Art. VIII, Sec. 10

(27) [Prescribing] the method by which and the terms and conditions under which the amount of any debt [of New York city to be excluded] in ascertaining the power of said city to become otherwise indebted shall be determined.
(Added 1909)

Art. VII, Sec. 4

(28) [Reducing the direct tax to an amount equal to the accruing interest on the debt provided for in article IV, section 40, when any sinking fund created under article IV, section 17, shall equal in amount the debt for which it was created].
(Added 1909)

Specific Restraints on Legislation

Freedom of Speech and Press
Art. I, Sec. 8

Section 22. No law shall be passed to restrain or abridge the liberty of speech or of the press.
(1821, VII, 8; 1846, I, 8)

Right to Assemble and Petition
Art. I, Sec. 9

Section 23. No law shall be passed abridging the right of the people peaceably to assemble and to petition the government, or any department thereof.
(1846, I, 10)

Damages for Injuries Causing Death
Art. I, Sec. 18

Section 24. The right of action now existing to recover damages for injuries resulting in death, shall never be abrogated; and the amount recoverable shall not be subject to any statutory limitations.

Suspension of Specie Payments
Art. VIII, Sec. 5

Section 25. The legislature shall have no power to pass any law sanctioning in any manner, directly or indirectly, the suspension of specie payments by any person, association or corporation, issuing bank notes of any description.
(1846, VIII, 5)

Divorce
Art. I, Sec. 9

Section 26. [No] divorce [shall be] granted otherwise than by due judicial proceedings.
(1846, I, 10)

Gambling
Art. I, Sec. 9

Section 27. [No] lottery [nor] sale of lottery tickets, pool-selling, book-making, or any other kind of gambling hereafter [shall] be authorized or allowed within this state.
(1821, VII, 11; 1846, I, 10)

Private and Local Bills
Art. III, Sec. 18

Section 28. The legislature shall not pass a private or local bill in any of the following cases:

1. Changing the names of persons.

2. Laying out, opening, altering, working or discontinuing roads, highways or alleys, or for draining swamp or other low lands.

3. Locating or changing county seats.

4. Providing for changes of venue in civil or criminal cases.

5. Incorporating villages.

6. Providing for election of members of boards of supervisors.

7. Selecting, drawing, summoning or impaneling grand or petit jurors.

8. Regulating the rate of interest on money.

9. The opening and conducting of elections or designating places of voting.

10. Creating, increasing or decreasing fees, percentages or allowances of public officers, during the term for which said officers are elected or appointed.

11. Granting to any corporation, association or individual the right to lay down railroad tracks.

12. Granting to any private corporation, association or individual any exclusive privilege, immunity or franchise whatever.
(As amended 1901)

13. Granting to any person, association, firm or corporation, an exemption from taxation on real or personal property.

14. Providing for building bridges, and chartering companies for such purposes, except on the Hudson river below Waterford, and on the East river, or over the waters forming a part of the boundaries of the state.
(1846), III, 18; added 1874)

Corporations
Art. VIII, Sec. 1

Section 29. Corporations may be formed under general laws; but shall not be created by special act, except for municipal purposes, and in cases where, in the judgment of the legislature, the objects of the corporation cannot be attained under general laws.
(1846, VIII, 1)

2. All general laws and special acts passed pursuant to this section may be altered from time to time or repealed.
(1846, VIII, 1)

Banks
Art. VIII, Sec. 4

Section 30. The legislature shall have no power to pass any act granting any special charter for banking purposes, but corporations or associations may be formed for such purposes under general laws.
(1846, VIII, 1)

Drainage of Agricultural Lands
Art. I, Sec. 7

Section 31. General laws may be passed permitting the owners or occupants of agricultural lands to construct and maintain for the drainage thereof, necessary drains, ditches and dykes upon the lands of others, under proper restrictions and with just compensation, but no special laws shall be enacted for such purposes.

Street Railroads
Art. III, Sec. 18

Section 32. No law shall authorize the construction or operation of a street railroad except upon the condition that the consent of the owners of one-half in value of the property bounded on, and the consent also of the local authorities having the control of, that portion of a street or highway upon which it is proposed to construct or operate such railroad be first obtained, or in case the consent of such property owners cannot be obtained, the appellate division of the supreme court in the department in which it is proposed to be constructed, may, upon application, appoint three commissioners who shall determine, after a hearing of all parties interested, whether such railroad ought to be constructed or operated, and their determination, confirmed by the court, may be taken in lieu of the consent of the property owners.
(1846, III, 18; added 1874)

Private Claims
Art. III, Sec. 19

Section 33. The legislature shall neither audit nor allow any private claim or account against the state, but may appropriate money to pay such claims as shall have been audited and allowed according to law.
(1846, III, 19; added 1874)

Claims Barred by Statute of Limitation
Art. VII, Sec. 6

Section 34. Neither the legislature, canal board, nor any person or persons acting in behalf of the state, shall audit, allow or pay any claim which, as between citizens of the state, would be barred by lapse of time.
(1846, VII, 14; as amended 1874)

2. This provision shall not be construed to repeal any statute fixing the time within which claims shall be presented or allowed, nor shall it extend to any claim duly presented within the time allowed by law, and prosecuted with due diligence from the time of such presentment. But if the claimant shall be under legal disability, the claim may be presented within two years after such disability is removed.
(1846, VII, 14; as amended 1874)

Extra Compensation
Art. III, Sec. 28

Section 35. The legislature shall not * * * grant any extra compensation to any public officer, servant, agent or contractor.
(1846, III, 24; added 1874)

Indebtedness
Art. VII, Sec. 2

Section 36. The state may, to meet casual deficits or failures in revenues, or for expenses not provided for, contract debts; but such debts, direct or contingent, singly or in the aggregate, shall not at any time exceed one million of dollars; and the money arising from the loans creating such debts shall be applied to the purposes for which they were obtained, or to repay the debts so contracted, and to no other purpose whatever.
(1846, VII, 10)

Debts to Repel Invasion
Art. VII, Sec. 3

Section 37. In addition to the above limited power to contract debts, the state may contract debts to repel invasion, suppress insurrection, or defend the state in war; but the money arising from the contracting of such debts shall be applied to the purpose for which it was raised, or to repay such debts, and to no other purpose whatever.

(1846, VII, 11)

Payment of Money
Art. III, Sec. 21

Section 38. No money shall ever be paid out of the treasury of this state, or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law; nor unless such payment be made within two years next after the passage of such appropriation act.

(1846, VII, 8)

Aid to Private Undertakings
Art. VIII, Sec. 9

Section 39. Neither the credit nor the money of the state shall be given or loaned to or in aid of any association, corporation or private undertaking. This section shall not * * * apply to any fund or property now held, or which may hereafter, be held, by the state for educational purposes.

(1846, VIII, 10; added 1874)

Art. VII, Sec. 1

2. The credit of the state shall not in any manner be given or loaned to or in aid of any individual, association or corporation.

(1846, VII, 9)

Creating Indebtedness
Art. VII, Sec. 4

Section 40. The legislature may provide for the issue of bonds of the state to run for a period not exceeding fifty years in lieu of the bonds heretofore authorized but not issued and shall impose and provide for the collection of a direct annual tax for the payment of the same as hereinbefore required. When any sinking fund created under [article IV, section 17], shall equal in amount the debt for which it was created, no further direct tax shall be levied on account of said sinking fund and the legislature shall reduce the tax to an amount equal to the accruing interest on such debt. The legislature may from time to time alter the rate of interest to be paid upon any state debt which has been or may be authorized pursuant to the provisions of [article IV, section 17] or upon any part of such debt, provided, however, that the rate of interest shall not be altered upon any part of such debt or upon any bond or other evidence thereof, which has been, or shall be created or issued before such alteration. In case the legislature increase the rate of interest upon any such debt, or part thereof, it shall impose and provide for the collection of a direct annual tax to pay and sufficient to pay the increased or altered interest on such debt as it falls due and also to pay and discharge the principal of such debt within fifty years from the time of the contracting thereof, and shall appropriate annually to the sinking fund moneys in amount sufficient to pay such interest and pay and discharge the principal of such debt when it shall become due and payable.

(Added to 1894, VII, 4, in 1905)

Payment of State Debt
Art. VII, Sec. 11

Section 41. The legislature may appropriate out of any funds in the treasury, moneys to pay the accruing interest and principal of any debt heretofore or hereafter created, or any part thereof and may set apart in each fiscal year moneys in the state treasury as a sinking fund to pay the interest as it falls due and to pay and discharge the principal of any debt heretofore or hereafter created under section [17] of article [IV] of the constitution until the same be wholly paid, and

the principal and income of such sinking fund shall be applied to the purpose for which said sinking fund is created and to no other purpose whatever; and, in the event such moneys so set apart in any fiscal year be sufficient to provide such sinking fund, a direct annual tax for such year need not be imposed and collected, as required by the provisions of said section [17] of article [IV], or of any law enacted in pursuance thereof.

(1894, VII, 11; added 1905)

Highways
Art. VII, Sec. 12

Section 42. A debt or debts of the state may be authorized by law for the improvement of highways. Such highways shall be determined under general laws, which shall also provide for the equitable apportionment thereof among the counties. The aggregate of the debts authorized by this section shall not at any one time exceed the sum of fifty millions of dollars. The payment of the annual interest on such debt and the creation of a sinking fund of at least two per centum per annum to discharge the principal at maturity shall be provided by general laws whose force and effect shall not be diminished during the existence of any debt created thereunder. The legislature may by general laws require the county or town or both to pay to the sinking fund the proportionate part of the cost of any such highway within the boundaries of such county or town and the proportionate part of the interest thereon, but no county shall at any time for any highway be required to pay more than thirty-five hundredths of the cost of such highway, and no town more than fifteen hundredths. None of the provisions of [sections 17 and 40] of this article shall apply to debts for the improvement of highways hereby authorized.

(1894, VII, 12; added 1905)

Private Roads
Art. I, Sec. 7

Section 43. Private roads may be opened in the manner to be prescribed by law, but in every case the necessity of the road and the amount of all damage to be sustained by the opening thereof shall be first determined by a jury of freeholders, and such amount, together with the expenses of the proceedings, shall be paid by the person to be benefited.

(1846, I, 7)

Special Session
Art. IV, Sec. 4

Section 44. At extraordinary sessions no subject shall be acted upon, except such as the Governor may recommend for consideration.

Workmen's Compensation
Art. I, Sec. 19

Section 45. Nothing contained in this constitution shall be construed to limit the power of the legislature to enact laws for the protection of the lives, health, or safety of employees; or for the payment, either by employers, or by employers and employees or otherwise, either directly or through a state or other system of insurance or otherwise, of compensation of injuries without regard to fault as a cause thereof, except where the injury is occasioned by the willful intention of the injured employee to bring about the injury or death of himself or of another, or where the injury results solely from the intoxication of the injured employee while on duty; or for the adjustment, determination and settlement, with or without trial by jury, of issues which may arise under such legislation; or to provide that the right of such compensation, and the remedy therefor shall be exclusive of all other rights and remedies for injuries to employees or for death resulting from such injuries; or to provide that the amount of such compensation for death shall not exceed a fixed or determinable sum; provided that all moneys paid by an employer to his employees or their legal repre-

sentatives, by reason of the enactment of any of the laws herein authorized, shall be held to be a proper charge in the cost of operating the business of the employer.

(Added 1912)

Charitable Institutions
Art. VIII, Sec. 14
Art. VIII, Sec. 9

Section 46. Nothing in this Constitution contained shall prevent the legislature from making such provision for the education and support of the blind, the deaf and dumb, and juvenile delinquents, as to it may seem proper.

(1846, VIII, 10)

Public Service
Art. XII, Sec. 1

Section 47. The legislature may regulate and fix the wages or salaries, the hours of work or labor, and make provision for the protection, welfare and safety of persons employed by the state or by any county, city, town, village or other civil division of the state, or by any contractor or sub-contractor performing work, labor or services for the state, or for any county, city, town, village or other civil division thereof.

(Added 1905)

ARTICLE V

THE EXECUTIVE

Organization

Head of Administration
Art. IV, Sec. 1

Section 1. [The head of the administration both of the military and of the civil government of the state shall be the governor; there shall also be a lieutenant-governor, who shall take the place of the governor whenever he shall be incapacitated, and who shall perform such other duties as are hereinafter provided].

Powers and Duties of the Chief Executive

Governor
Executive Power
Art. IV, Sec. 1

Section 2. The [chief] executive power [both civil and military] shall be vested in a governor.

(1777, XVII; 1821, III, 1; 1846, IV, 1)

General Business
Art. IV, Sec. 4

2. He shall transact all necessary business with the officers of government, civil and military.

(1777, XIX; 1821, III, 4; 1846, IV, 4)

Convenes Legislature
Art IV, Sec. 4

Section 3. He shall have power to convene the legislature, or the senate only, on extraordinary occasions.

(1777, XVIII; 1821, III, 4; 1846, IV, 4)

Pardons, Reprieves
Art. IV, Sec. 5

Section 4. The governor shall have the power to grant reprieves, commutations and pardons after convictions, for all offenses except treason and cases of impeachment, upon such conditions and with such restrictions and limitations, as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons.

(1777, XVIII; 1821, III, 5; 1846, IV, 5)

2. Upon conviction for treason he shall have power to suspend the execution of the sentence, until the case shall be reported to the legislature at its next meeting, when the legislature shall either pardon, or commute the sentence, or grant a further reprieve.

(1777, XVIII; 1821, III, 5; 1846, IV, 5)

Execute Laws
Art. IV, Sec. 4

Section 5. He shall expedite all such measures as may be resolved upon by the legislature, and shall take care that the laws are faithfully executed.

(1777, XIX; 1821, III, 4; 1846, IV, 4)

Reports to Legislature
Art IV, Sec. 4

Section 6. He shall communicate by message to the legislature at every session the condition of the state.

(1821, III, 4; 1846, IV, 4; see 1777, XIX)

Reports on Pardons, etc.
Art. IV, Sec. 5

2. [He shall] annually communicate to the legislature each case of reprieve, commutation or pardon granted, stating the name of the convict, the crime for which he was convicted, the sentence and its date, and the date of the commutation, pardon or reprieve.

(1846, IV, 5; see 1777, XVIII; 1821, III, 5)

Recommend Legislation
Art. IV, Sec. 4

3. [He shall] recommend such matters to [the legislature] as he shall judge expedient.

(1777, XIX; 1821, III, 4; 1846, IV, 4)

Lieut.-Governor
Art. IV, Sec. 6

Section 7. [When the lieutenant governor shall become governor as provided in Article III, section 6 all] the powers and duties of the office shall devolve upon [him].

(1821, III, 6; 1846, IV, 6; see 1777, XX)

ARTICLE VI

FINANCIAL AND OTHER PROPRIETARY DEPARTMENTS, BOARDS AND OFFICERS

Section 1. [For the purpose of caring for the properties, funds and records and performing such proprietary functions as they may be charged with by law, the following offices and boards are created: secretary of state, treasurer, commissioner of the canal fund, the commissioners of the land office; and such other offices or boards may be created for this purpose as the legislature may deem expedient].

Organization

Treasurer

Section 2. [The state treasurer shall keep the moneys belonging to the state and perform such other functions as may be prescribed by law].

State Boards
Commissioners of Canal Fund
Art. V, Sec. 5

Section 3. The lieutenant-governor, secretary of state, comptroller and attorney-general shall be the commissioners of the canal fund.

(1846, V, 5)

Canal Board
Art. V, Sec. 5

Section 4. The canal board shall consist of the commissioners of the canal fund, the state engineer and surveyor, and the superintendent of public works.

(1846, V, 5)

Commissioners of the Land office
Art. V, Sec. 5

Section 5. The lieutenant-governor, speaker of the assembly, secretary of state, comptroller, treasurer, attorney-general and state engineer and surveyor shall be commissioners of the land office.

(1846, V, 5)

Powers, Duties and Limitations

Secretary of State Taking Census
Art. III, Sec. 4

Section 6. An enumeration of the inhabitants of the state shall be taken under the direction of the secretary of state, during the months of May and June, in the year one thousand nine hundred and five, and in the same months every tenth year thereafter.

(1777, V; 1821, I, 6; 1846, III, 4)

Art. VII, Sec. 6

Section 7. [Neither the] canal board, nor any person or persons acting in behalf of the state, shall audit, allow, or pay any claim which, as between citizens of the state, would be barred by lapse of time. This provision shall not be construed to repeal any statute fixing the time within which claims shall be presented or allowed, nor shall it extend to any claims duly presented within the time allowed by law, and prosecuted with due diligence from the time of such presentment. But if the claimant shall be under legal disability, the claim may be presented within two years after such disability is removed.

(1846, VII, 14; as amended 1874)

Art. IX, Sec. 4

Section 8. Neither the state nor any subdivision thereof shall use its property or credit or any public money, or authorize or permit either to be used, directly or indirectly, in aid or maintenance other than for examination or inspection, of any school or institution of learning wholly or in part under the control or direction of any religious denomination, or in which any denominational tenet or doctrine is taught.

Disposition of State Property
Forest Reserves
Art. VII, Sec. 7

Section 9. The lands of the state now owned or hereafter acquired, constituting the forest preserve as now fixed by law, shall be forever kept as wild forest lands. They shall not be leased, sold or exchanged, or be taken by any corporation, public or private, nor shall the timber thereon be sold, removed or destroyed.

2. But the legislature may by general laws provide for the use of not exceeding three per centum of such lands for the construction and maintenance of reservoirs for municipal water supply, for the canals of the state and to regulate the flow of streams. Such reservoirs shall be constructed, owned and controlled by the state, but such work shall not be undertaken until the boundaries and high flow lines thereof shall have been accurately surveyed and fixed, and after public notice, hearing and determination that such lands are required for such public use. The expense of any such improvements shall be apportioned on the public and private property and municipalities benefited to the extent of the benefits received. Any such reservoir shall always be operated by the state and the legislature shall provide for a charge upon the property and municipalities benefited for a reasonable return to the state upon the value of the rights and property of the state used and the services of the state rendered, which shall be fixed for terms of not exceeding ten years and be readjustable at the end of any term. Unsanitary conditions shall not be created or continued by any such public works. A violation of any of the provisions of this section may be restrained at the suit of the people, or, with the consent of the supreme court in appellate division, on notice to the attorney-general at the suit of any citizen.

(Added 1913)

Sinking Fund
Art. VII, Sec. 5

Section 10. The sinking funds provided for the payment of interest and the extinguishment of the principal of the debts of the state shall be separately kept and safely invested, and neither of them shall be appropriated or used in any

manner other than for the specified purpose for which it shall have been provided.

(1846, VII, 13; as amended 1874)

Art. VII, Sec. 9

Section 11. All contracts for work or materials on any canal shall be made with the persons who shall offer to do or provide the same at the lowest price, with adequate security for their performance. No extra compensation shall be made to any contractor; but if, from any unforeseen cause, the terms of any contract shall prove to be unjust and oppressive, the canal board may, upon the application of the contractor, cancel such contract.

Canals Improvement
Art. VII, Sec. 10

Section 12. The canals may be improved in such manner as the legislature shall provide by law. A debt may be authorized for that purpose in the mode [prescribed by section 17 of article IV], or the cost of such improvement may be defrayed by the appropriation of funds from the state treasury, or by equitable annual taxes.

No Tolls
Art. VII, Sec. 9

2. No tolls shall hereafter be imposed on persons or property transported on the canals.

(1846, VII, 3; as amended 1874)

Income
Art. VII, Sec. 8

3. All funds that may be derived from any lease, sale or other disposition of any canal shall be applied to the improvement, superintendence or repair of the remaining portion of the canals.

(1846, VII, 6; as amended 1874)

Not to Be Sold
Art. VII, Sec. 8

4. The legislature shall not sell, lease or otherwise dispose of the Erie canal, the Oswego canal, the Champlain canal, the Cayuga and Seneca canals, or the Black River canal; but they shall remain the property of the state and under its management forever. The prohibition of lease, sale or other disposition herein contained, shall not apply to the canal known as the Main and Hamburg street canal, situated in the city of Buffalo, and which extends easterly from the westerly line of Hamburg street.

(1846, VII, 6; as amended 1874)

School Fund
Art. IX, Sec. 3

Section 13. The capital of the common school fund, the capital of the literature fund, and the capital of the United States deposit fund, shall be respectively preserved inviolate. The revenue of the said common school fund shall be applied to the support of common schools; the revenue of the said literature fund shall be applied to the support of academies; and the sum of twenty-five thousand dollars of the revenue of the United States deposit fund shall each year be appropriated to and made part of the capital of the said common school fund.

(1846, IX, without change)

ARTICLE VII

CIVIL DEPARTMENTS FOR RENDERING SERVICE TO THE PUBLIC

Organization

Section 1. [For the purpose of rendering service to the public, other than military protection, the following departments are established: department of public works, depart-

ment of canal construction, department of prisons, department of charities, department of education, and the legislature may create such other departments and offices as it may deem expedient].

Boards of Charities, Lunacy and Prisons
Art. VIII, Sec. 11

Section 2. [There shall be a state board of charities, a state commissioner in lunacy, and a state commission of prisons.].

University Regents
Art. IX, Sec. 2

Section 3. The corporation created in the year one thousand seven hundred and eighty-four, under the name of The Regents of the University of the State of New York, is hereby continued under the name of The University of the State of New York. It shall be governed and its corporate powers, which may be increased, modified or diminshed by the legislature, shall be exercised by not less than nine regents.

Powers, Duties and Limitations

Superintendent of Public Works
Art. V, Sec. 3

Section 4. The superintendent of public works * * * shall be charged with the execution of all laws relating to the repair and navigation of the canals, and also those relating to the construction and improvement of the canals, except so far as the execution of the laws relating to such construction or improvement shall be confided to the state engineer and surveyor; subject to the control of the legislature, he shall make the rules and regulations for the navigation or use of the canals * * * [He] shall perform all the duties of the canal commissioners, and board of canal commissioners, as now declared by law, until otherwise provided by the legislature.

(1846, V, 3; as amended 1869)

Assistants
Art. V, Sec. 3

Section 5. [The duties of the assistant superintendents] shall be prescribed by [the superintendent of public works,] subject to modification by the legislature.

(1846, V, 3; as amended 1869)

Superintendent of State Prisons
Art. V, Sec. 4

Section 6. The superintendent [of state prisons] shall have all the powers and perform all the duties not inconsistent herewith, which were formerly had and performed by the inspectors of state prisons * * * He shall have the superintendence, management and control of state prisons, subject to such laws as now exist or may hereafter be enacted.

(1846, V, 4; as amended 1869)

Of Charities
Art. VIII, Sec. 11

Section 7. [The state board of charities] shall visit and inspect all institutions, whether state, county, municipal, incorporated, or not incorporated, which are of a charitable, eleemosynary, correctional or reformatory character, excepting only such institutions as are hereby made subject to the visitation and inspection of either of the commissions hereinafter mentioned, but including all reformatories except those in which adult males convicted of felony shall be confined.

In Lunacy

Section 8. [The state commission in lunacy] shall visit and inspect all institutions, either public or private, used for the care and treatment of the insane (not including institutions for epileptics or idiots).

Of Prisons

2. [The state commission of prisons] shall visit and inspect all institutions used for the detention of sane adults charged with or convicted of crime, or detained as witnesses or debtors.

Other Powers and Duties
Art. V, Sec. 6

3. The powers and duties of the respective boards, and of the several officers in this article mentioned, shall be such as now are or hereafter may be prescribed by law.

(1846, V, 6)

Art. VIII, Sec. 15

4. The legislature may confer upon the commission and upon the board mentioned in the foregoing sections any additional powers that are not inconsistent with other provisions of the Constitution.

Offices Abolished
Art. V, Sec. 8

Section 9. All offices for the weighing, gauging, measuring, culling or inspecting any merchandise, produce, manufacture or commodity whatever, are hereby abolished; and no such office shall hereafter be created by law; but nothing in this section contained shall abrogate any office created for the purpose of protecting the public health or the interests of the state in its property, revenue, tolls or purchases, or of supplying the people with correct standards of weights and measures, or shall prevent the creation of any office for such purposes hereafter.

(1846, V, 8)

Restraint on Administration
Supervision and Inspection
Art. VIII, Sec. 13

Section 10. Existing laws relating to institutions referred to in the foregoing sections and to their supervision and inspection, in so far as such laws are not inconsistent with the provisions of the Constitution, shall remain in force until amended or repealed by the legislature. The visitation and inspection herein provided for, shall not be exclusive of other visitation and inspection now authorized by law.

ARTICLE VIII

MILITARY GOVERNMENT

Constituency

Citizens
Art. XI, Sec. 1

Section 1. All able-bodied male citizens between the ages of eighteen and forty-five years, who are residents of the state, shall constitute the militia, subject, however, to such exemptions as are now or may be hereafter created by the laws of the United States, or by the legislature of this state.

(See 1777, XL; 1821, VII, 5; 1846, XI, 1)

Aliens
Art. XI, Sec. 2

2. The legislature may provide for the enlistment into the active force of such other persons as may make application to be so enlisted.

Organization and Powers

Commander-in-Chief
Art. IV, Sec. 4

Section 2. The governor shall be commander-in-chief of the military and naval forces of the state.

(1777, XVIII; 1821, III, 4; 1846, IV, 4)

Art. IV, Sec. 6

2. When the governor shall, with the consent of the legislature, be out of the state, in time of war, at the head of a military force thereof, he shall continue commander-in-chief of all the military force of the state.

(1777, XX; 1821, III, 6; 1846, IV, 6)

Militia Divisions
Art. XI, Sec. 3

Section 3. The militia shall be organized and divided into such land and naval, and active and reserve forces, as the legislature may deem proper, provided, however, that there shall be maintained at all times a force of not less than ten thousand enlisted men, fully uniformed, armed, equipped, disciplined and ready for active service.

(1777, XL; 1821, VII, 5; 1846, XI, 1)

Officers
Art. XI, Sec. 4

Section 4. The governor shall appoint the chiefs of the several staff departments, his aides-de-camp and military secretary, all of whom shall hold office during his pleasure, their commissions to expire with the term for which the governor shall have been elected; he shall also nominate, and with the consent of the senate appoint, all major-generals.

(1846, XI, 3; see 1821, IV)

Art. XI, Sec. 5

Section 5. All other commissioned and non-commissioned officers shall be chosen or appointed in such manner as the legislature may deem most conducive to the improvement of the militia, provided, however, that no law shall be passed changing the existing mode of election and appointment unless two-thirds of the members present in each house shall concur therein.

(1821, IV; 1846, XI, 4 and 6)

Commissions
Art. XI, Sec. 6

Section 6. The commissioned officers shall be commissioned by the governor as commander-in-chief.

(1777, XXIV; 1821, IV, 4; 1846, XI, 5)

Removals
Art. XI, Sec. 6

Section 7. No commissioned officer shall be removed from office during the term for which he shall have been appointed or elected, unless by the senate on the recommendation of the governor, stating the grounds on which such removal is recommended, or by the sentence of a court-martial, or upon the findings of an examining board organized pursuant to law, or for absence without leave for a period of six months or more.

(1821, IV, 4; 1846, XI, 5)

Military Appropriations
Art. XI, Sec. 3

Section 8. And it shall be the duty of the legislature at each session to make sufficient appropriations for the maintenance [of the militia].

Military Debts
Art. VII, Sec. 3

Section 9. In addition to the * * * limited power to contract debts, the state may contract debts to repel invasion, suppress insurrection, or defend the state in war; but the money arising from the contracting of such debts shall be applied to the purpose for which it was raised, or to repay such debts, and to no other purpose whatever.

(1846, VII, 11)

ARTICLE IX

GENERAL AUDITOR

[Nothing is said in the constitution regarding the organization of the office of comptroller. The only provisions carrying powers are those which make it his duty to appoint clerks of prison, article III, section 3, paragraph 14, and making him *ex officio* a commissioner of the land office and of the canal fund, article VI, sections 3 and 5.]

ARTICLE X

THE COURTS

Organization

Section 1. [The tribunals hereby constituted for the trial of cases are of two general classes, viz: courts of law and equity, and political courts. The courts of law and equity

shall be: The court of appeals; the appellate division of the supreme court; the supreme court; the county courts; the court of sessions in the county of New York; the surrogates courts. The political courts shall be: the court of impeachment, an election court for the determination of election returns and qualifications of members of the legislature].

Court of Appeals Composition
Art. VI, Sec. 7

Section 2. The court of appeals is continued. It shall consist of the chief judge and associate judges now in office * * * and their successors. [Justices of the supreme court may be designated by the governor to serve as associate judges as provided in article III, section 3, paragraph 4.]

(1846, VI, 2; 1869, VI, 2)

Quorum
Art. VI, Sec. 7

2. Five members of the court shall form a quorum, and the concurrence of four shall be necessary to a decision. * * * No more than seven judges shall sit in any case.

(1846, VI, 2, as amended 1869)

Art. VI, Sec. 8

3. The powers and jurisdiction of the court shall not be suspended for want of appointment or election when the number of judges is sufficient to constitute a quorum.

(1846, VI, 3, as amended 1869)

Clerk's Office
Art. VI, Sec. 19

4. The clerk of the court of appeals shall keep his office at the seat of government.

(1846, VI, 19; 1869, VI, 20)

Appellate Division of the Supreme Court Composition
Art. VI, Sec. 2

Section 3. There shall be an appellate division of the supreme court, consisting of seven justices in the first department, and of five justices in each of the other departments.

(1846, VI, 7; as amended, 1869; 1846, VI, 28; as amended 1872)

Departments
Art. VI, Sec. 2

2. The legislature shall divide the state into four judicial departments * * *. Once in ten years the legislature may alter the judicial departments, but without increasing the number thereof.

(1846, VI, 9; 1869, VI, 7)

Departments
Art. VI, Sec. 2

3. The first department shall consist of the county of New York; the others shall be bounded by county lines, and be compact and equal in population as nearly as may be.

Quorum
Art. VI, Sec. 2

4. In each department four shall constitute a quorum, and the concurrence of three shall be necessary to a decision. No more than five justices shall sit in any case.

Assignment of Terms and Justices
Art. VI, Sec. 2

5. The justices of the appellate division in each department shall have power to fix the times and places for holding special terms therein, and to assign the justices in the departments to hold such terms; or to make rules therefor.

Transfer of Appeals
Art. VI, Sec. 2

6. Whenever the appellate division in any department shall be unable to dispose of its business within a reasonable time, a majority of the presiding justices of the several departments at a meeting called by the presiding justice of the department in arrears may transfer any pending appeals from such department to any other department for hearing and determination.

Clerk's Office
Art. VI, Sec. 19

7. [The clerk of the appellate division] shall keep his office at a place to be designated by said justices.

Supreme Court Composition Art. VI, Sec. 1

Section 4. The supreme court shall consist of the justices now in office and of the judges transferred thereto by [article XIV, section 8,] all of whom shall continue to be justices of the supreme court during their respective terms, and of twelve additional justices * * * chosen by the electors of the several existing judicial districts, three in the first district, three in the second, and one in each of the other districts; and of their successors.

(1821, V, 4; 1846, VI, 4; 1869, VI, 6; 1879, VI, 6)

Increasing Number of Justices Art. VI, Sec. 1

2. The legislature may from time to time increase the number of justices in any judicial district except that the number of justices in the first and second district or in any of the districts into which the second district may be divided, shall not be increased to exceed one justice for each eighty thousand, or fraction over forty thousand of the population thereof, as shown by the last state or federal census or enumeration; and except that the number of justices in any other district shall not be increased to exceed one justice for each sixty thousand or fraction over thirty-five thousand of the population thereof as shown by the last state or federal census or enumeration.

(Added 1905)

Clerks Art. VI, Sec. 19

3. Clerks of the several counties shall be clerks of the supreme court.

(1846, VI, 19; 1869, VI, 20)

Courts of Sessions Art. VI, Sec. 14

Section 5. Courts of sessions, except in the county of New York, are abolished from and after the last day of December, one thousand eight hundred and ninety-five.

County Courts Art. VI, Sec. 14

Section 6. The existing county courts are continued.

(1846, VI, 15; as amended 1869)

Composition Art. VI, Sec. 14

2. [They shall consist respectively of] the judges thereof now in office [and their successors] * * * In the county of Kings there shall be four county judges.

(1846, VI, 14; 1869, VI, 15; 1894, VI, 14; as amended 1913)

Increasing Number of Judges Art. VI, Sec. 14

3. The number of county judges in any county may also be increased, from time to time, by the legislature, to such number that the total number of county judges in any one county shall not exceed one for every two hundred thousand, or major fraction thereof, of the population of such county.

(Added 1913)

Surrogates Courts Art. VI, Sec. 15

Section 7. The existing surrogates courts are continued.

Composition

2. [They shall consist respectively of] the surrogates now in office [and of their successors].

(1846, VI, 15; 1869, VI, 15, 16)

Creating New Courts Art. VI, Sec. 15

3. In counties having a population exceeding forty thousand, wherein there is no separate surrogate, the legislature may provide for the election of a separate officer to be surrogate.

Art. VI, Sec. 16

Section 8. The legislature may on application of the board of supervisors, provide for the election of local officers, not to exceed two in any county, to discharge the duties of county judge and of surrogate, in cases of their inability or of a vacancy, and in such other cases as may be provided by law, and to exercise such other powers in special cases as are or may be provided by law.

(1846, VI, 15; 1869, VI, 16)

Number of Justices of the Peace Art. VI, Sec. 17

Section 9. [The] number and classification [of justices of the peace] may be regulated by law.

(1846, VI, 17; 1869, VI, 18; see 1821, IV, 7)

Inferior Local Courts Art. VI, Sec. 18

Section 10. Inferior local courts of civil and criminal jurisdiction may be established by the legislature but no inferior local court hereafter created shall be a court of record.

(1846, VI, 18; as amended 1869)

Political Courts Court of Impeachment Art. VI, Sec. 13

Section 11. The court for the trial of impeachments shall be composed of the president of the senate, the senators or the major part of them, and the judges of the court of appeals, or the major part of them. On the trial of an impeachment against the governor or lieutenant governor, the lieutenant governor shall not act as a member of the court * * * No person shall be convicted without the concurrence of two-thirds of the members present.

(1777, XXXII; 1821, V, 1; 1846, VI, 1)

Elections Art. III, Sec. 10

Section 12. [Each house shall] be the judge of the elections, returns and qualifications of its own members.

(1777, IX, XII; 1821, I, 3; 1846, III, 10)

Powers and Duties of the Judiciary

Court of Appeals Art. VI, Sec. 9

Section 13. After the last day of December, one thousand eight hundred and ninety-five, the jurisdiction of the court of appeals, except where the judgment is of death, shall be limited to the review of questions of law. No unanimous decision of the appellate division of the supreme court that there is evidence supporting or tending to sustain a finding of fact or a verdict not directed by the court, shall be reviewed by the court of appeals. Except where the judgment is of death, appeals may be taken, as of right, to said court only from judgments or orders entered upon decisions of the appellate division of the supreme court, finally determining actions or special proceedings, and from orders granting new trial on exceptions, where the appellants stipulate that upon affirmance judgment absolute shall be rendered against them. The appellate division in any department may, however, allow an appeal upon any question of law which, in its opinion, ought to be reviewed by the court of appeals.

2. The legislature may further restrict the jurisdiction of the court of appeals and the right of appeal thereto, but the right to appeal shall not depend upon the amount involved.

Appellate Division of the Supreme Court Art. VI, Sec. 2

Section 14. From and after the last day of December, one thousand eight hundred and ninety-five, the appellate division shall have the jurisdiction now exercised by the supreme court at its general terms, and by the general terms of the court of common pleas for the city and county of New York, the superior court of the city of New York, the superior court of Buffalo and the city court of Brooklyn, and such additional jurisdiction as may be conferred by the legislature.

Supreme Court Art. VI, Sec. 1

Section 15. The supreme court [shall have] general jurisdiction in law and equity, subject to such appellate jurisdiction of the court of appeals as now is or may be prescribed by law not inconsistent with this article.

(1846, VI, 6, as amended 1869; see 1846, VI, 3)

Art. VI, Sec. 5

2. The jurisdiction now exercised by the [superior court of the city of New York, the court of common pleas for the city and county of New York, the superior court of Buffalo, and the city court of Brooklyn] hereby abolished, shall be

vested in the supreme court. Appeals from inferior and local courts now heard in the court of common pleas for the city and county of New York and superior court of Buffalo, shall be heard in the supreme court in such manner and by such justice or justices as the appellate divisions in the respective departments which include New York and Buffalo shall direct, unless otherwise provided by the legislature.

Art. VI, Sec. 6

3. All [the] jurisdiction [of the circuit courts and courts of oyer and terminer] shall [after the last day of December, one thousand eight hundred and ninety-five] be vested in the supreme court and all actions and proceedings then pending in such courts shall be transferred to the supreme court for hearing and determination. Any justice of the supreme court, except as otherwise provided in this article, may hold court in any county.

Art VI, Sec. 15

4. For the relief of surrogates courts the legislature may confer upon the supreme court in any county having a population exceeding four hundred thousand, the powers and jurisdictions of surrogates, with authority to try issues of fact by jury in probate cases.

Clerks
Art. VI, Sec. 19

Section 16. [Clerks of the supreme court, shall have] such powers and duties as shall be prescribed by law.

(1846, VI, 19; 1869, VI, 20)

County Courts
Art. VI, Sec. 14

Section 17. County courts shall have the powers and jurisdiction they now possess, and also original jurisdiction in actions for the recovery of money only, where the defendants reside in the county, and in which the complaint demands judgment for a sum not exceeding two thousand dollars.

(1846, VI, 15; as amended 1869; see 1846, VI, 14)

Art. VI, Sec. 14

2. All the jurisdiction of the court of sessions in each county, except the county of New York, shall [after the last day of December, one thousand eight hundred and ninety-five] be vested in the county court thereof, and all actions and proceedings then pending in such courts of sessions shall be transferred to said county courts for hearing and determination. Every county judge shall perform such duties as may be required by law.

(1846, VI, 14; 1869, VI, 15)

3. A county judge of any county may hold county courts in any other county when requested by the judge of such other county.

(1846, VI, 15; as amended 1869)

4. The legislature may hereafter enlarge or restrict the jurisdiction of the county courts, provided, however, that their jurisdiction shall not be so extended as to authorize an action therein for the recovery of money only, in which the sum demanded exceeds two thousand dollars, or in which any person not a resident of the county is a defendant.

(1846, VI, 15; as amended 1876)

Art. VI, Sec. 15

5. The county judge shall be surrogate of his county, except where a separate surrogate has been or shall be elected.

(1846, VI, 15; as amended 1876)

Court of Special Sessions
Art. VI, Sec. 23

Section 18. [Courts of special sessions] shall have jurisdiction of offenses of the grade of misdemeanors as may be prescribed by law.

(1846, VI, 26; as amended 1869)

Surrogates Courts
Art. VI, Sec. 15

Section 19. Surrogates and surrogates courts shall have the jurisdiction and powers which the surrogates and existing surrogates courts now possess, until otherwise provided by the legislature.

(1846, VI, 15; 1869, VI, 15)

Justices of the Peace
Art. VI, Sec. 17

Section 20. [Justices of the peace and district court justices in cities shall have such powers as may be prescribed by law].

(1846, VI, 18; as amended 1869)

Courts Created by the Legislature
Art. VI, Sec. 18

Section 21. The legislature shall not hereafter confer upon any inferior or local court of its creation, any equity jurisdiction or any greater jurisdiction in other respects than is conferred upon county courts by or under this article.

Court of Impeachment
Art. VI, Sec. 13

Section 22. [The court of impeachment shall have the usual powers but] judgment in cases of impeachment shall not extend further than to removal from office, or removal from office and disqualification, to hold and enjoy any office of honor, trust or profit under this state; but the party impeached shall be liable to indictment and punishment according to law

(1777, XXXIII; 1821, V, 2; 1846, VI, 1)

Jurisdiction and Proceedings
Art. VI, Sec. 3

Section 23. Except as herein otherwise provided, the legislature shall have the same power to alter and regulate the jurisdiction and proceedings in law and in equity that it has heretofore exercised.

(1846, VI, 5)

Limitations of Powers of Courts

Witnesses
Art. I, Sec. 3

Section 24. No person shall be rendered incompetent to be a witness on account of his opinion on matters of religious belief

(1846, I, 3)

Libels
Art. I, Sec. 8

Section 25. In all criminal prosecutions or indictments for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

(1821, VI, 8; 1846, I, 8)

Taking Private Property
Art. I, Sec. 7

Section 26. When private property shall be taken for any public use, the compensation to be made therefor, when such compensation is not made by the state, shall be ascertained by a jury, or by the supreme court with or without a jury, but not with a referee, or by not less than three commissioners appointed by a court of record, as shall be prescribed by law.

(1846, I, 7)

Apportionment
Art. III, Sec. 5

Section 27. An apportionment by the legislature or other body, shall be subject to review by the supreme court, at the suit of any citizen, under such reasonable regulations as the legislature may prescribe; and any court before which a cause may be pending involving an apportionment, shall give precedence thereto over all other causes and proceedings, and if said court be not in session it shall convene promptly for the disposition of the same.

Equity
Art. VI, Sec. 3

Section 28. The testimony in equity cases shall be taken in like manner as in cases at law.

(1846, VI, 10; 1869, VI, 8)

ARTICLE XI

LOCAL GOVERNMENT—SUBDIVISION OF THE STATE

Cities Classification
Art. XII, Sec. 2

Section 1. All cities are classified according to the latest state enumeration, as from time to time made, as follows: the first class includes all cities having a population of one hundred and seventy-five thousand, or more; the second class, all cities having a population of fifty thousand and less than one hundred and seventy-five thousand; the third class, all other cities.

Organization
Art. XII, Sec. 1

Section 2. It shall be the duty of the legislature to provide for the organization of cities and incorporated villages, and to restrict their power of taxation, assessment, borrowing money, contracting debts, and loaning their credit, so as to prevent abuses in assessments and in contracting debt by such municipal corporations.

(1846, VIII, 9, without change)

Excess Condemnation
Art. I, Sec. 7

Section 3. The legislature may authorize cities to take more land and property than is needed for actual construction in the laying out, widening, extending or relocating parks, public places, highways or streets; provided, however, that the additional land and property so authorized to be taken shall be no more than sufficient to form suitable building sites abutting on such park, public place, highway or street. After so much of the land and property has been appropriated for such park, public place, highway or street as is needed therefor, the remainder may be sold or leased.

(Added by vote of the people 1913)

County Board of Supervisors
Art. III, Sec. 26

Section 4. There shall be in each county, except in a county wholly included in a city, a board of supervisors, to be composed of such members, and elected in such manner, and for such period, as is or may be provided by law. In a city which includes an entire county or two or more entire counties, the powers and duties of a board of supervisors may be devolved upon the municipal assembly, common council or board of aldermen, or other legislative body of the city.

(Added to 1846, III, as section 22, by vote of the people, 1874; amended 1899)

Legislative Powers, Auditors
Art. III, Sec. 27

Section 5. The legislature shall, by general laws, confer upon the boards of supervisors of the several counties of the state such further powers of local legislation and administration as the legislature may from time to time deem expedient [1] and in counties which now have, or may hereafter have, county auditors or other fiscal officers, authorized to audit bills, accounts, charges, claims or demands against the county, the legislature may confer such powers upon said auditors, or fiscal officers, as the legislature may, from time to time, deem expedient.

(First part to [1], 1846, III, 17, changed to section 23, by vote of the people, 1874; the remainder added 1909)

Liability
Art. X, Sec. 1

Section 6. The county shall never be made responsible for the acts of the sheriff.

(1821, IV, 8; 1846, X, 1)

Money or Credit Not to be Given for Private Purposes
Art. VIII, Sec. 10

Section 7. No county, city, town or village shall hereafter give any money or property, or loan its money or credit to or in aid of any individual, association or corporation, or become directly or indirectly the owner of stock in or bonds of, any association or corporation; nor shall any such county, city, town or village be allowed to incur any indebtedness except for county, city, town or village purposes. This section shall not prevent such county, city, town or village from making such provision for the aid or support of its poor as may be authorized by law.

(Added to 1846, VIII, as section 11, by vote of the people, 1874)

Charitable Institutions
Art. VIII, Sec. 14

Section 8. [Nothing in this constitution shall] prevent any county, city, town or village from providing for the care, support, maintenance and secular education of inmates of orphan asylums, homes for dependent children or correctional institutions, whether under public or private control. Payments by counties, cities, towns and villages to charitable eleemosynary, correctional and reformatory institutions, wholly or partly under private control, for care, support and maintenance, may be authorized, but shall not be required by the legislature. No such payments shall be made for any inmate of such institutions who is not received and retained therein pursuant to rules established by the state board of charities. Such rules shall be subject to the control of the legislature by general laws.

Indebtedness
Art. VIII, Sec. 10

Section 9. No county or city shall be allowed to become indebted for any purpose or in any manner to an amount which, including existing indebtedness, shall exceed ten per centum of the assessed valuation of the real estate of such county or city subject to taxation, as it appeared by the assessment rolls of said county or city on the last assessment for the state or county taxes prior to the incurring of such indebtedness; and all indebtedness in excess of such limitation, except such as now may exist, shall be absolutely void, except as herein otherwise provided. No county or city whose present indebtedness exceeds ten per centum of the assessed valuation of its real estate subject to taxation, shall be allowed to become indebted in any further amount until such indebtedness shall be reduced within such limit.

(1846, VIII, 11, added by vote of the people, 1884; 1894, VIII, 10)

Art. VIII, Sec. 10

2. This section shall not be construed to prevent the issuing of certificates of indebtedness or revenue bonds issued in anticipation of the collection of taxes for amounts actually contained, or to be contained in the taxes for the year, when such certificates or revenue bonds are issued and payable out of such taxes, nor to prevent the city of New York from issuing bonds to be redeemed out of the tax levy for the year next succeeding the year of their issue, provided that the amount of such bonds which may be issued in any one year in excess of the limitations herein contained shall not exceed one-tenth of one per centum of the assessed valuation of the real estate of said city subject to taxation. Nor shall this section be construed to prevent the issue of bonds to provide for the supply of water; but the term of the bonds issued to provide the supply of water in excess of the limitation of indebtedness fixed herein, shall not exceed twenty years, and a sinking fund shall be created on the issuing of said bonds for their redemption, by raising annually a sum which will produce an amount equal to the sum of the principal and interest of said bonds at their maturity. All certificates of

indebtedness or revenue bonds issued in anticipation of the collection of taxes, which are not retired within five years after their date of issue, and bonds issued to provide for the supply of water, and any debt hereafter incurred by any portion or part of a city, if there shall be any such debt, shall be included in ascertaining the power of the city to become otherwise indebted except that debts incurred by the city of New York after the first day of January, nineteen hundred and four, and debts incurred by any city of the second class after the first day of January, nineteen hundred and eight, and debts incurred by any city of the third class after the first day of January, nineteen hundred and ten, to provide for the supply of water, shall not be so included; and except further that any debt hereafter incurred by the city of New York for a public improvement owned or to be owned by the city, which yields to the city current net revenue, after making any necessary allowance for repairs and maintenance for which the city is liable, in excess of the interest on said debt and of the annual installments necessary for its amortization may be excluded in ascertaining the power of said city to become otherwise indebted, provided that a sinking fund for its amortization shall have been established and maintained and that the indebtedness shall not be so excluded during any period of time when the revenue aforesaid shall not be sufficient to equal the said interest and amortization installments, and except further that any indebtedness heretofore incurred by the city of New York for any rapid transit or dock investment may be so excluded proportionately to the extent to which the current net revenue received by said city therefrom shall meet the interest and amortization installments thereof, provided, that any increase in the debt incurring power of the city of New York which shall result from the exclusion of debts heretofore incurred shall be available only for the acquisition or construction of properties to be used for rapid transit or dock purposes.

(1846, VIII, 11, added by vote of the people, 1884; 1894, VIII, 10; amended 1905, 1907, 1909)

Art. VIII, Sec. 10

3. The legislature shall prescribe the method by which and the terms and conditions under which the amount of any debt to be so excluded shall be determined, and no such debt shall be excluded except in accordance with the determination so prescribed.

(Added by vote of the people 1909)

Art. VIII, Sec. 10

4. The legislature may in its discretion confer appropriate jurisdiction on the appellate division of the supreme court in the first judicial department for the purpose of determining the amount of any debt to be so excluded.

(Added by vote of the people, 1909)

Art. VIII, Sec. 10

5. No indebtedness of a city valid at the time of its inception shall thereafter become invalid by reason of the operation of any of the provisions of this section.

(Added by vote of the people, 1909)

Art. VIII, Sec. 10

6. Whenever the boundaries of any city are the same as those of a county, or when any city shall include within its boundaries more than one county, the power of any county wholly included within such city to become indebted shall cease, but the debt of the county, heretofore existing, shall not, for the purposes of this section, be reckoned as a part of the city debt.

(Amended by vote of the people, 1899)

Tax Rate
Art. VIII, Sec. 10

Section 10. The amount hereafter to be raised by tax for county or city purposes, in any county containing a city of over one hundred thousand inhabitants, or any such city of this state, in addition to providing for the principal and interest of existing debt, shall not in the aggregate exceed in any one year two per centum of the assessed valuation of the real and personal estate of such county or city, to be ascertained as prescribed in [the foregoing] section in respect to county or city debt.

(1846, VIII, 11; added by vote of the people, 1884)

Extra Compensation
Art. III, Sec. 28

Section 11. [Neither] the common council of any city, nor any board of supervisors [shall] grant any extra compensation to any public officer, servant, agent or contractor.

(1846, III, 24; added, 1874)

ARTICLE XII

AMENDMENTS

Art. XIV, Sec. 1

Section 1. Any amendment or amendments to this Constitution may be proposed in the senate and assembly; and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals, with the yeas and nays taken thereon, and referred to the legislature to be chosen at the next general election of senators, and shall be published for three months previous to the time of making such choice; and if in the legislature so next chosen, as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the legislature to submit such proposed amendment or amendments to the people for approval in such manner and at such times as the legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments by a majority of the electors voting thereon, such amendment or amendments shall become a part of the Constitution from and after the first day of January next after such approval.

(1821, VIII; 1846, XIII, 1)

Art. XIV, Sec. 2

Section 2. At the general election to be held in the year one thousand nine hundred and sixteen, and every twentieth year thereafter, and also at such times as the Legislature may by law provide, the question: "Shall there be a convention to revise the Constitution and amend the same?" shall be decided by the electors of the state; and in case a majority of the electors voting thereon shall decide in favor of a convention for such purpose, the electors of every senate district of the state, as then organized, shall elect three delegates at the next ensuing general election at which members of the assembly shall be chosen, and the electors of the state voting at the same election shall elect fifteen delegates-at-large. The delegates so elected shall convene at the capitol on the first Tuesday of April next ensuing after their election, and shall continue their session until the business of such convention shall have been completed. Every delegate shall receive for his services the same compensation and the same mileage as shall then be annually payable to the members of the assembly. A majority of the convention shall constitute a quorum for the transaction of business, and no amendment to the Constitution shall be submitted for approval to the electors as hereinafter provided, unless by the assent of a majority of all the delegates elected to the convention, the yeas and nays

being entered on the journal to be kept. The convention shall have the power to appoint such officers, employees and assistants as it may deem necessary, and fix their compensation and to provide for the printing of its documents, journal and proceedings. The convention shall determine the rules of its own proceedings, choose its own officers, and be the judge of the election, returns and qualifications of its members. In case of a vacancy, by death, resignation or other cause, of any district delegate elected to the convention, such vacancy shall be filled by a vote of the remaining delegates representing the district in which such vacancy occurs. If such vacancy occurs in the office of a delegate-at-large, such vacancy shall be filled by a vote of the remaining delegates-at-large. Any proposed constitution or constitutional amendment which shall have been adopted by such convention, shall be submitted to a vote of the electors of the state at the time and in the manner provided by such convention, at an election which shall be held not less than six weeks after the adjournment of such convention. Upon the approval of such constitution or constitutional amendments, in the manner provided in the last preceding section, such constitution or constitutional amendment shall go into effect on the first day of January next after such approval.

(1846, XIII, 2)

Art. XIV, Sec. 3

Section 3. Any amendment proposed by a constitutional convention relating to the same subject as an amendment proposed by the Legislature, coincidently submitted to the people for approval at the general election held in the year one thousand eight hundred and ninety-four, or at any subsequent election, shall, if approved, be deemed to supersede the amendment so proposed by the legislature.

Article XIII

PROVISIONS OF PRIVATE LAW INCLUDED IN CONSTITUTION*

Reenactment of the Present Laws
Art. I, Sec. 16

Section 1. Such parts of the common law, and of the acts of the legislature of the colony of New York, as together did form the law of said colony, on the nineteenth day of April, one thousand seven hundred and seventy-five, and the resolutions of the congress of the said colony, and of the convention of the state of New York, in force on the twentieth day of April, one thousand seven hundred and seventy-seven, which have not since expired, or been repealed or altered; and such acts of the legislature of this state as are now in force, shall be and continue the law of this state, subject to such alterations as the legislature shall make concerning the same. But all such parts of the common law, and such of the said acts, or parts thereof, as are repugnant to this Constitution are hereby abrogated.

(1777, XXXV, 1821, VII, 13; 1846, I, 17)

* It is a common thing to find in a charter of government (or so-called written constitution) certain provisions which, logically, form no part of a constitution, but which partake of the nature of legislation. Such provisions as these have been collected here under the above title. In making the classification, those parts of the charter which provide for the structure and the exercise of the powers of government have been regarded as constitutional and those parts which are directed to the individual are regarded as statutory. In other words, it is conceived that the "constitution" is that body of laws which is set up by the state, through its authorized agents, for the regulation of the government, while "the provisions of private law" is that body of law which is established for the regulation of society. As a matter of giving certain statutes greater permanence and placing them beyond the power of government to alter, it has been customary to have them enacted by the superior constituent body. This accounts for the statutes which we find in the acts of constituent assemblies.

Contracts
Art. I, Sec. 17

Section 2. All grants of land within the state, made by the king of Great Britain, or persons acting under his authority, after the fourteenth day of October one thousand seven hundred and seventy-five, shall be null and void; but nothing contained in this Constitution shall affect any grants of land within this state, made by the authority of the said king or his predecessors, or shall annul any charters to bodies politic and corporate, by him or them made, before that day; or shall affect any such grants or charters since made by this state, or by persons acting under its authority, or shall impair the obligation of any debts contracted by the state, or individuals, or bodies corporate, or any other rights of property, or any suits, actions, rights of action, or other proceedings in courts of justice.

(1777, XXXVI; 1821, VII, 14; 1846, I, 18)

Land Law
Escheat
Art. I, Sec. 10

Section 3. The people of this state, in their right of sovereignty, are deemed to possess the original and ultimate property in and to all lands within the jurisdiction of the state; and all lands the title to which shall fail, from a defect of heirs, shall revert, or escheat to the people.

(1846, I, 11)

Allodial Lands
Art. I, Sec. 12

Section 4. All lands within this state are declared to be allodial, so that, subject only to the liability to escheat, the entire and absolute property is vested in the owners, according to the nature of their respective estates.

(1846, I, 13)

Feudal Tenure
Art. I, Sec. 11

Section 5. All feudal tenures of every description with all their incidents, are declared to be abolished, saving, however, all rents and services certain which at any time heretofore have been lawfully created or reserved.

(1846, I, 12)

Lease of Agricultural Lands
Art. I, Sec. 13

Section 6. No lease or grant of agricultural land, for a longer period than twelve years, hereafter made in which shall be reserved any rent or service of any kind, shall be valid.

(1846, I, 14)

Restraints on Alienation
Art. I, Sec. 14

Section 7. All fines, quarter sales, or other like restraints upon alienation reserved in any grant of land, hereafter to be made, shall be void.

(1846, I, 15)

Art. I, Sec. 15

Section 8. No purchase or contract for the sale of lands in this state made since the fourteenth day of October, one thousand seven hundred and seventy-five; or which may hereafter be made, of, or with the Indians, shall be valid, unless made under the authority, and with the consent of the legislature.

(1777, XXXVII; 1821, VII, 12; 1846, I, 16)

Canals
Art. VII, Sec. 9

Section 9. No tolls shall hereafter be imposed on persons or property transported on the canals, but all boats navigating the canals, and the owners and masters thereof, shall be subject to such laws and regulations as have been or may hereafter be enacted concerning the navigation of the canals.

(1846, VII, 2; as amended, 1874)

Corporations
Definition
Art. VIII, Sec. 3

Section 10. The term corporations as used in this article shall be construed to include all associations and joint stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships. And

all corporations shall have the right to sue and shall be subject to be sued in all courts in like cases as natural persons.

(1846, VIII, 3)

Banking
Art. VIII, Sec. 4

Section 11. Corporations or associations may be formed for [savings bank] purposes under general laws.

(1846, VIII, 4)

Savings Bank
Art. VIII, Sec. 4

Section 12. All charters hereafter granted for [savings bank] corporations shall be made to conform to [the] general laws and to such amendments as may be made thereto.

2. No such corporation shall have any capital stock, nor shall the trustees thereof, or any of them, have any interest whatever, direct or indirect, in the profits of such corporation; and no director or trustee of any such bank or institution shall be interested in any loan or use of any money or property of such bank or institution for savings.

(1846, VIII, 4; as amended, 1874)

Insolvency
Art. VIII, Sec. 8

Section 13. In case of the insolvency of any bank or banking association, the billholders thereof shall be entitled to preference in payment, over all other creditors of such bank or association.

(1846, VIII, 8)

Liability of Stockholders
Art. VIII, Sec. 7

Section 14. The stockholders of every corporation and joint-stock association for banking purposes, shall be individually responsible to the amount of their respective share or shares of stock in any such corporation or association, for all its debts and liabilities of every kind.

(1846, VIII, 7)

Dues
Art. VIII, Sec. 2

Section 15. Dues from corporations shall be secured by such individual liability of the corporators and other means as may be prescribed by law.

(1846, VIII, 2)

Criminal Law
Bribery
Art. XIII, Sec. 5

Section 16. Any corporation, or officer or agent thereof, who shall offer or promise to a public officer, or person elected or appointed to a public office, any such free pass, free transportation, franking privilege or discrimination, shall also be deemed guilty of a misdemeanor and liable to punishment except as herein provided. No person, or officer or agent of a corporation giving any such free pass, free transportation, franking privilege or discrimination hereby prohibited, shall be privileged from testifying in relation thereto, and he shall not be liable to civil or criminal prosecution therefor if he shall testify to the giving of the same.

Art. XIII, Sec. 3

Section 17. Any person who shall offer or promise a bribe to an officer, if it shall be received, shall be deemed guilty of a felony and liable to punishment, except as herein provided. No person offering a bribe shall, upon any prosecution of the officer for receiving such bribe, be privileged from testifying in relation thereto, and he shall not be liable to civil or criminal prosecution therefor, if he shall testify to the giving or offering of such bribe. Any person who shall offer or promise a bribe, if it be rejected by the officer to whom it was tendered, shall be deemed guilty of an attempt to bribe, which is hereby declared to be a felony.

(1846, XV, 2; added 1874)

Art. XIII, Sec. 4

Section 18. Any person charged with receiving a bribe, or with offering or promising a bribe, shall be permitted to testify in his own behalf in any civil or criminal prosecution therefor.

(1846, XV, 3; added 1874)

Publication of Laws and Decisions
Art. VI, Sec. 21

Section 19. All laws and judicial decisions shall be free for publication by any person.

(1846, VI, 22; amended as section 23, 1869)

ARTICLE XIV

SCHEDULE*

First Senate Districts
Art. III, Sec. 3

Section 1. [Until after the next enumeration, the Senate districts shall be as follows]:

District number one (1) shall consist of the counties of Suffolk and Richmond.

District number two (2) shall consist of the county of Queens.

District number three (3) shall consist of that part of the county of Kings comprising the first, second, third, fourth, fifth and sixth wards of the city of Brooklyn.

District number four (4) shall consist of that part of the county of Kings comprising the seventh, thirteenth, nineteenth and twenty-first wards of the city of Brooklyn.

District number five (5) shall consist of that part of the county of Kings comprising the eighth, tenth, twelfth, and thirteenth wards of the city of Brooklyn, and the ward of the city of Brooklyn which was formerly the town of Gravesend.

District number six (6) shall consist of that part of the county of Kings comprising the ninth, eleventh, twentieth and twenty-second wards of the city of Brooklyn.

District number seven (7) shall consist of that part of the county of Kings comprising the fourteenth, fifteenth, sixteenth and seventeenth wards of the city of Brooklyn.

District number eight (8) shall consist of that part of the county of Kings comprising the twenty-third, twenty-fourth, twenty-fifth and twenty-ninth wards of the city of Brooklyn, and the town of Flatlands.

District number nine (9) shall consist of that part of the county of Kings comprising the eighteenth, twenty-sixth, twenty-seventh and twenty-eighth wards of the city of Brooklyn.

District number ten (10) shall consist of that part of the county of New York within and bounded by a line beginning at Canal street and the Hudson river and running thence along Canal street, Hudson street, Dominick street, Varick street, Broome street, Sullivan street, Spring street, Broadway, Canal street, the Bowery, Division street, Grand street and Jackson street, to the East river and thence around the southern end of Manhattan island to the place of beginning, and also Governor's, Bedlow's and Ellis Islands.

District number eleven (11) shall consist of that part of the county of New York lying north of district number ten, and within and bounded by a line beginning at the junction of Broadway and Canal street, and running thence along Broadway, Fourth street, the Bowery and Third avenue, St. Mark's place, Avenue A, Seventh street, Avenue B, Clinton

* The word "schedule" is a term that has come to be used to indicate all of the temporary provisions of a Constitution, or the clauses which it becomes necessary to insert as a means of getting from the old to the new form of government.

street, Rivington street, Norfolk street, Division street, Bowery and Canal street to the place of beginning.

District number twelve (12) shall consist of that part of the county of New York lying north of district numbers ten and eleven and within and bounded by a line beginning at Jackson street and the East river, and running thence through Jackson street, Grand street, Division street, Norfolk street, Rivington street, Clinton street, Avenue B, Seventh street, Avenue A, St. Mark's place, Third avenue, East Fourteenth street to the East River, and along the East river to the place of beginning.

District number thirteen (13) shall consist of that part of the county of New York lying north of district number ten, and within and bounded by a line beginning at the Hudson river at the foot of Canal street, and running thence along Canal street, Hudson street, Dominick street, Varick street, Broome street, Sullivan street, Spring street, Broadway, Fourth street, the Bowery and Third avenue, Fourteenth street, Sixth avenue, West Fifteenth street, Seventh avenue, West Nineteenth street, Eighth avenue, West Twentieth street, and the Hudson river, to the place of beginning.

District number fourteen (14) shall consist of that part of the county of New York lying north of districts numbers twelve and thirteen, and within and bounded by a line beginning at East Fourteenth street and the East river, and running thence along East Fourteenth street, Irving place, East Nineteenth street, Third avenue, East Twenty-third street, Lexington avenue, East Fifty-third street, Third avenue, East Fifty-second street and the East river, to the place of beginning.

District number fifteen (15) shall consist of that part of the county of New York lying north of district number thirteen, and within and bounded by a line beginning at the junction of West Fourteenth street and Sixth avenue, and running thence along Sixth avenue, West Fifteenth street, Seventh avenue, West Fortieth street, Eighth avenue, and the Transverse road across Central Park at Ninety-seventh street, Fifth avenue, East Ninety-sixth street, Lexington avenue, East Twenty-third street, Third avenue, East Nineteenth street, Irving place and Fourteenth street, to the place of beginning.

District number sixteen (16) shall consist of that part of the county of New York lying north of district number thirteen, and within and bounded by a line beginning at Seventh avenue and West Nineteenth street, and running thence along West Nineteenth street, Eighth avenue, West Twentieth street, the Hudson River, West Forty-sixth street, Tenth avenue, West Forty-third street, Eighth avenue, West Fortieth street and Seventh avenue, to the place of beginning.

District number seventeen (17) shall consist of that part of the county of New York lying north of district number sixteen, and within and bounded by a line beginning at the junction of Eighth avenue and West Forty-third street, and running thence along West Forty-third street, Tenth avenue, West Forty-sixth street, the Hudson river, West Eighty-ninth street, Tenth or Amsterdam avenue, West Eighty-sixth street, Ninth or Columbus avenue, West Eighty-first street and Eighth avenue, to the place of beginning.

District number eighteen (18) shall consist of that part of the county of New York lying north of district number fourteen, and within and bounded by a line beginning at the junction of East Fifty-second street and the East river, and running thence along East Fifty-second street, Third avenue, East Fifty-third street, Lexington avenue, East Eighty-fourth street, Second avenue, East Eighty-third street and the East

river, to the place of beginning; and also Blackwell's Island.

District number nineteen (19) shall consist of that part of the county of New York lying north of district number seventeen, and within and bounded by a line beginning at West Eighty-ninth street and the Hudson river, and running thence along the Hudson river and Spuyten Duyvil creek around the northern end of Manhattan island; thence southerly along the Harlem river to the north end of Fifth avenue; thence along Fifth avenue, East One Hundred and Twenty-ninth street, Fourth or Park avenue, East One Hundred and Tenth street, Fifth avenue, the Transverse road across Central Park at Ninety-seventh street, Eighth avenue, West Eighty-first street, Ninth or Columbus avenue, West Eighty-sixth street, Tenth or Amsterdam avenue and West Eighty-ninth street, to the place of beginning.

District number twenty (20) shall consist of that part of the county of New York lying north of districts numbers eighteen and fifteen, and within and bounded by a line beginning at East Eighty-third street and the East river, running thence through East Eighty-third street, Second avenue, East Eighty-fourth street, Lexington avenue, East Ninety-sixth street, Fifth avenue, East One Hundred and Tenth street, Fourth or Park avenue, East One Hundred and Nineteenth street to the Harlem river, and along the Harlem and East rivers, to the place of beginning; and also Randall's Island and Ward's Island.

All the above districts in the county of New York bounded upon or along the boundary waters of the county, shall be deemed to extend to the county line.

District number twenty-one (21) shall consist of that part of the county of New York lying north of districts numbers nineteen and twenty, within and bounded by a line beginning at East One Hundred and Nineteenth street and the Harlem river, and running thence along East One Hundred and Nineteenth street, Fourth or Park avenue, One Hundred and Twenty-ninth street, Fifth avenue and the Harlem river, to the place of beginning; and all that part of the county of New York not hereinbefore described.

District number twenty-two (22) shall consist of the county of Westchester.

District number twenty-three (23) shall consist of the counties of Orange and Rockland.

District number twenty-four (24) shall consist of the counties of Dutchess, Columbia and Putnam.

District number twenty-five (25) shall consist of the counties of Ulster and Greene.

District number twenty-six (26) shall consist of the counties of Delaware, Chenango and Sullivan.

District number twenty-seven (27) shall consist of the counties of Montgomery, Fulton, Hamilton and Schoharie.

District number twenty-eight (28) shall consist of the counties of Saratoga, Schenectady and Washington.

District number twenty-nine (29) shall consist of the county of Albany.

District number thirty (30) shall consist of the county of Rensselaer.

District number thirty-one (31) shall consist of the counties of Clinton, Essex and Warren.

District number thirty-two (32) shall consist of the counties of St. Lawrence and Franklin.

Districts number thirty-three (33) shall consist of the counties of Otsego and Herkimer.

District number thirty-four (34) shall consist of the county of Oneida.

District number thirty-five (35) shall consist of the counties of Jefferson and Lewis.

District number thirty-six (36) shall consist of the county of Onondaga.

District number thirty-seven (37) shall consist of the counties of Oswego and Madison.

District number thirty-eight (38) shall consist of the counties of Broome, Cortland and Tioga.

District number thirty-nine (39) shall consist of the counties of Cayuga and Seneca.

District number forty (40) shall consist of the counties of Chemung, Tompkins and Schuyler.

District number forty-one (41) shall consist of the counties of Steuben and Yates.

District number forty-two (42) shall consist of the counties of Ontario and Wayne.

District number forty-three (43) shall consist of that part of the county of Monroe comprising the towns of Brighton, Henrietta, Irondequoit, Mendon, Penfield, Perinton, Pittsford, Rush and Webster, and the fourth, sixth, seventh, eighth, twelfth, thirteenth, fourteenth, sixteenth, seventeenth and eighteenth wards of the city of Rochester, as at present constituted.

District number forty-four (44) shall consist of that part of the county of Monroe comprising the towns of Chili, Clarkson, Gates, Greece, Hamlin, Ogden, Parma, Riga, Sweden and Wheatland, and the first second, third, fifth, ninth, tenth, eleventh, fifteenth, nineteenth and twentieth wards of the city of Rochester, as at present constituted.

District number forty-five (45) shall consist of the counties of Niagara, Genesee and Orleans.

District number forty-six (46) shall consist of the counties of Allegheny, Livingston and Wyoming.

District number forty-seven (47) shall consist of that part of the county of Erie comprising the first, second, third, sixth, fifteenth, nineteenth, twentieth, twenty-first, twenty-second, twenty-third and twenty-fourth wards of the city of Buffalo, as at present constituted.

District number forty-eight (48) shall consist of that part of the county of Erie comprising the fourth, fifth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth and sixteenth wards of the city of Buffalo, as at present constituted.

District number forty-nine (49) shall consist of that part of the county of Erie comprising the seventeenth, eighteenth and twenty-fifth wards of the city of Buffalo, as at present constituted; and all the remainder of the said county of Erie not hereinbefore described.

District number fifty (50) shall consist of the counties of Chautauqua and Cattaraugus.

(1777, XII; amended 1801; 1821, I, 5; 1846, III, 3)

First Assembly Districts
Art. III, Sec. 5

Section 2. Until after the next enumeration, members of the assembly shall be apportioned to the several counties as follows: Albany county, four members; Allegheny county, one member; Broome county, two members; Cattaraugus county, two members; Cayuga county, two members; Chautauqua county, two members; Chemung county, one member; Chenango county, one member; Clinton county, one member; Columbia county, one member; Cortland county, one member; Delaware county, one member; Dutchess county, two members; Erie county, eight members; Essex county, one member; Franklin county, one member; Fulton and Hamilton counties, one member; Genesee county, one member; Greene county, one member; Herkimer county, one member; Jefferson county, two members; Kings county, twenty-one members; Lewis county, one member; Livingston county, one member; Madison county, one member; Monroe county, four members; Montgomery county, one member; New York county, thirty-five members; Niagara county, two members; Oneida county, three members; Onondaga county, four members; Ontario county, one member; Orange county, two members; Orleans county, one member; Oswego county, two members; Otsego county, one member; Putnam county, one member; Queens county, three members; Rensselaer county, three members; Richmond county, one member, Rockland county, one member; St. Lawrence county, two members; Saratoga county, one member; Schenectady county, one member; Schoharie county, one member; Schuyler county, one member; Seneca county, one member; Steuben county, two members; Suffolk county, two members; Sullivan county, one member; Tioga county, one member; Tompkins county, one member; Ulster county, two members; Warren county, one member; Washington county, one member; Wayne county, one member; Westchester county, three members; Wyoming county, one member; and Yates county, one member.

(1777, IV; amended 1801; 1821, I, 7; 1846, III, 5)

First Senators
Art. III, Sec. 2

Section 3. The senators elected in the year one thousand eight hundred and ninety-five shall hold their offices for three years.

First Governor and Lieutenant-Governor
Art. IV, Sec. 1

Section 4. The governor and lieutenant-governor elected next preceding the time when this section shall take effect, shall hold office until and including the thirty-first day of December, one thousand eight hundred and ninety-six, and their successors shall be chosen at the general election in that year.

First Secretary of State, Comptroller, Treasurer, Attorney-General, State Engineer
Art. V, Sec. 2

Section 5. The first election of the secretary of state, comptroller, treasurer, attorney-general and state engineer and surveyor, pursuant to this article shall be held in the year one thousand eight hundred and ninety-five, and their terms of office shall begin on the first day of January following, and shall be for three years. At the general election in the year one thousand eight hundred and ninety-eight, and every two years thereafter, their successors shall be chosen for the term of two years.

First State Boards
Art. VIII, Sec. 15

Section 6. Commissioners of the state board of charities and commissioners of the state commission in lunacy, now holding office shall be continued in office for the term for which they were appointed respectively, unless the Legislature shall otherwise provide.

First Judges and Justices
Term
Art. VI, Sec 7

Section 7. [The chief judge and associate judges of the court of appeals now in office] shall hold their offices until the expiration of their respective terms.

Courts Abolished
Art. VI, Sec. 5

Section 8. From and after the first day of January, one thousand eight hundred and ninety-six, the seals, records, papers and documents of or belonging to [the superior court of the city of New York, the court of common pleas for the city and county of New York, the superior court of Buffalo, and the city court of Brooklyn, abolished by this Constitution] shall be deposited in the offices of the clerks of the several counties in which said courts now exist; and all actions and proceedings then pending in such courts shall be transferred to the supreme court for hearing and determination. The judges of said courts in office on the first day of January, one thousand eight hundred and ninety-six, shall, for the remainder of the terms for which they were elected or appointed, be justices of the supreme court; but they shall

sit only in the counties in which they were elected or appointed. Their salaries shall be paid by the said counties respectively, and shall be the same as the salaries of the other justices of the supreme court residing in the same counties. Their successors shall be elected as justices of the supreme court by the electors of the judicial districts in which they respectively reside.

First County Courts
Art. VI, Sec. 14

Section 9. [The judges of the county courts] now in office shall hold their offices until the expiration of their respective terms.

County Judge, Kings County
Art. VI, Sec. 14

Section 10. The additional county judges in the county of Kings shall be chosen at the general election held in the first odd-numbered year after the adoption of this amendment.

The additional county judges whose offices may be created by the legislature shall be chosen at the general election held in the first odd-numbered year after the creation of such office.

First Surrogates
Art. VI, Sec. 15

Section 11. The surrogates now in office shall hold their offices until the expiration of their terms.

First Justices of Peace
Art. VI, Sec. 22

Section 12. Justices of the peace and other local judicial officers provided for in [article III, section 2, paragraph 10, section 5, paragraph 4, and in article X, section 10] in office when this article takes effect shall hold their offices until the expiration of their respective terms.

Oyer and Terminer
Art. VI, Sec. 6

Section 13. Circuit courts and courts of oyer and terminer are abolished from and after the last day of December, one thousand eight hundred and ninety-five.

First City and County Officers
Art. XII, Sec. 3

Section 14. The terms of office of all [city and county officers set forth in article II, section 7, paragraph 7] elected before the first day of January, one thousand eight hundred and ninety-five, whose successors have not then been elected, which under existing laws would expire with an even-numbered year, or in an odd-numbered year and before the end thereof, are extended to and including the last day of December next following the time when such terms would otherwise expire; the terms of office of all such officers, which under existing laws would expire in an even-numbered year, and before the end thereof, are abridged so as to expire at the end of the preceding year. This section shall not apply to any city of the third class, or to elections of any judicial officer, except judges and justices of inferior local courts.

Appeals from General Term
Art. VI, Sec. 9

Section 15. The provisions of [article X, section 13] shall not apply to orders made or judgments rendered by any general term before the last day of December, one thousand eight hundred and ninety-five, but appeals therefrom may be taken under existing provisions of law.

Time of Going Into Effect
Art. XV, Sec. 1

Section 16. This Constitution shall be in force from and including the first day of January, one thousand eight hundred and ninety-five, except as herein otherwise provided.

Done in Convention at the Capitol in the City of Albany, the twenty-ninth day of September, in the year One thousand eight hundred and ninety-four, and of the independence of the United States of America the one hundred and nineteenth.

In witness whereof we have hereunto subscribed our names.

JOSEPH HODGES CHOATE,
President and Delegate-at-Large.

CHARLES ELLIOTT FITCH,
Secretary.

(See 1821, IX; 1846, XIV, 13)

END OF
TITLE